

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**TUKUE A OKBAMICHAEL**  
Claimant

**APPEAL NO: 19R-UI-03260-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEABOARD TRIUMPH FOODS LLC**  
Employer

**OC: 02/10/19**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's March 7, 2019, reference 01 unemployment insurance decision that denied benefits, finding that the claimant left employment voluntarily on February 13, 2019 without good cause for leaving. Notices were sent to the parties' address of record for a telephone hearing to be held at 11:00 a.m. on March 27, 2019. The claimant was not contacted because there was not a working telephone number available. On February 28, 2019, a decision was entered by the administrative law judge affirming the claimant's disqualification for benefits. Mr. Okbamichael filed an appeal with the Employment Appeal Board on April 18, 2019, the Appeal Board remanded the issue for a due process hearing, finding that the claimant had submitted a telephone number but had not been called. In compliance with the Appeal Board's directive, after due notice, a telephone conference hearing was held on May 9, 2019. Mr. Okbamichael participated personally. Although duly notified, employer did not participate in the hearing. Participating as the official interpreter was Language Line interpreter 11263.

**ISSUE:**

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having heard the testimony and considered all of the evidence in the record, the administrative law judge finds: Tukue A. Okbamichael began employment with Seaboard Triumph Foods, LLC beginning on May 29, 2018. Claimant worked full-time and was paid by the hour. On approximately February 10, 2019, the claimant sustained a minor injury at home. Mr. Okbamichael visited the emergency room and was then referred to his personal doctor. Mr. Okbamichael's doctor verified that he was injured and could not return to work for three days due to the accident and placed Mr. Okbamichael on limited duty restricting him from lifting greater than ten pounds until February 18, 2019. Although Mr. Okbamichael had reported his three days of absence to the employer and the reason for it, he was discharged on February 13, 2019 when he presented a doctor's note excusing him from work for the past three days that he had been gone. At the time of the accident, Mr. Okbamichael had notified the employer of the

accident and that he would be off work until February 13, 2019. Because he had stated the number of days that he would be off work, and that that he was off due to doctor's orders, Mr. Okbamichael reasonably believed it was excused.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in discharge cases. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*,

616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that Mr. Okbamichael was injured and his doctor had verified that the claimant was unable to work for a three day period. The claimant notified the employer that he would be absent for those three days, specifically citing the doctor's note excusing him from work for those three days. Mr. Okbamichael recently concluded that he had provided required adequate notice to the employer of his impending absences and provided a doctor's note upon his return. Although the doctor's note indicated that the claimant was limited to no more than ten pounds lifting, the limitation was for a very short duration. The employer chose not to allow the claimant to resume work or to be absent for any additional days due to the limitation but instead discharged Mr. Okbamichael at that time.

The question before the administrative law judge is not whether the employer had a right to discharge the claimant but whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of job insurance benefits. Based upon the evidence in the record, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant was discharged for intentional work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

Accordingly, the claimant is held eligible to receive unemployment insurance benefits, providing that he meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's unemployment insurance decision dated March 7, 2019, reference 01 is reversed. Claimant was discharged from employment for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn