

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAIME V CANTU
Claimant

APPEAL NO. 06A-UI-11670-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 10/29/06 R: 01
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jaime Cantu filed an appeal from a representative's decision dated November 27, 2006, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on December 19, 2006. Mr. Cantu participated personally. The employer participated by Nicole Koeppen, Assistant Human Resources Manager. The hearing was conducted through Relay Iowa.

ISSUE:

At issue in this matter is whether Mr. Cantu was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Cantu began working for Tyson on October 18, 2005 and was a full-time production worker. His last day at work was October 19, 2006. He was arrested and confined to jail on October 19. He returned to work on October 24, at which time he was notified that he had exceeded his allowable attendance points. Mr. Cantu missed three consecutive days of work because he was in jail. Therefore, he no longer had a job with Tyson.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge is satisfied that Mr. Cantu was advised by someone at Tyson that he had "pointed out," meaning he had gone over the number of attendance points he was allowed to have. The administrative law judge concludes that the employer initiated the separation and, therefore, it is considered a discharge. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

Mr. Cantu was discharged after he missed three days of work because he was in jail. The absences are unexcused, as they were for personal reasons. Absences caused by personal matters are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The administrative law judge considers three consecutive unexcused absences to be sufficient to establish excessive unexcused absenteeism within the meaning of the law. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. Accordingly, benefits are denied.

DECISION:

The representative's decision dated November 27, 2006, reference 01, is hereby affirmed. Mr. Cantu was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw