

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSE D MUNGER**

Claimant

**APPEAL NO. 13A-UI-13311-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 11/03/13**

**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Tyson, filed an appeal from a decision dated November 25, 2013, reference 01. The decision allowed benefits to the claimant, Jesse Munger. After due notice was issued, a hearing was held by telephone conference call on December 20, 2013. The claimant participated on his own behalf. The employer participated by Human Resources Manager Will Sager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Jesse Munger was employed by Tyson from May 17, 2010 until November 6, 2013 as a full-time warehouse worker. He had received warnings regarding his attendance. Most of his absences were due to non-work illnesses, although he did have family medical leave for some of the missed days.

The final incident was a properly reported absence due to illness on October 13, 2013. The employer had to review his attendance records to make sure none of the absences being counted against him were due to the family medical leave and whether all had been properly reported. He was discharged on November 6, 2013, by General Supervisor Mike Masters for exceeding the number of allowable attendance points.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

871 IAC 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 claimant was discharged for excessive absenteeism. The final incident was a properly reported illness which is not considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). As there was no current, final act of misconduct which precipitated the discharge as required by 871 IAC 24.32(6), disqualification may not be imposed.

**DECISION:**

The unemployment insurance decision dated November 25, 2013, reference 01, is affirmed. Jesse Munger is qualified for benefits, provided he is otherwise eligible.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/css