

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SADIK S PARATUSIC**  
Claimant

**APPEAL NO. 08A-UI-10103-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEEF PRODUCTS INC**  
Employer

**OC: 10/07/08 R: 03  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated October 23, 2008, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 18, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Zijo Suceska. Rick Wood participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a laborer from March 5, 2008, to August 21, 2008. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer at least one half hour before the start of their shift if they were not able to work as scheduled and were subject to termination if they received 14 attendance points.

The claimant received attendance points as follows: March 13 (tardy-one point), March 14 (illness absence with late call-three points), March 17 (tardy-one point), May 28 (illness absence with proper call-one point), June 28 (illness absence with proper call-one point), July 21 (illness absence with proper call-one point), August 7 (illness absence with proper call-one point), August 22 (illness absence with proper call-one point), August 26 (illness absence with no call-three points), August 27 (illness absence with proper call-one point).

The claimant was sick and unable to work on August 26 and 27 due to complications from dental surgery. He failed to call in on August 26 because he did not have a prepaid phone card for his cell phone to use to call the employer. When he returned to work on August 28, he brought in an excuse from his dentist. He was discharged at that time for violating the employer attendance policy by accumulating 14 points.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(8) provides that past acts and warnings can be used to determine the magnitude of a current act of misconduct, but a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(7) provides that 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.

No willful and substantial misconduct has been proven in this case. The claimant was absent from work on August 26 and 27, which led to his discharge. He was absent due to legitimate illness with an excuse from his dentist. While he did not call on August 26, he did call on August 27 and on nearly all the other days on which he accumulated points. The evidence does not show excessive unexcused absenteeism that would demonstrate disqualifying misconduct under the law.

**DECISION:**

The unemployment insurance decision dated October 23, 2008, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs