

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

BRIAN D FINCH  
209 W PLEASANT VALLEY  
SIGOURNEY IA 52591

WEST LIBERTY FOODS LLC  
207 W 2<sup>ND</sup> ST  
PO BOX 318  
WEST LIBERTY IA 52776

Appeal Number: 05A-UI-06341-JTT  
OC: 05/22/05 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absences

STATEMENT OF THE CASE:

West Liberty Foods filed a timely appeal from the June 8, 2005, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on July 5, 2005. At the time of the hearing, Brian Finch elected not to participate. Superintendent Sandy Van Patten represented the employer. Exhibits One through Six were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brian Finch was employed by West Liberty Foods as a full-time production worker from February 22, 2005 to March 31, 2005, when Production Supervisor Michelle Ward discharged him for

excessive absenteeism. There was no other basis for the discharge. Mr. Finch worked on the first shift, 6:00 a.m. to 2:30 a.m., Monday through Friday.

The employer has a written attendance policy. Mr. Finch executed his written acknowledgment of the policy on February 22, 2005. Under the policy, Mr. Finch was expected to contact the employer by the scheduled start of his shift if he needed to be absent from work. Mr. Finch was still within his first 90 days of employment at the time he was discharged. As a new employee, Mr. Finch was subject to discharge if he was absent for any reason three times in his first 90 days or if he had one incident of "no-call, no-show."

The final absence that prompted the discharge occurred on March 31, 2005, when Mr. Finch overslept and did not contact the employer until late morning. When Mr. Finch made contact with Production Supervisor Michelle Ward, Ms. Ward advised Mr. Finch that the employer had terminated his employment. Mr. Finch had previously been absent on February 28, 2005 for personal reasons. On March 8, 2005, Mr. Finch had been absent due to the need to take his ill daughter to a doctor, and had properly notified the employer.

At the time of Mr. Finch's 14-day employee review on March 4, 2005, Mr. Finch's supervisor warned Mr. Finch that he had missed one day of work and would be terminated if he was tardy or absent during the subsequent two months.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Finch was discharged for misconduct in connection with his employment based on excessive unexcused absences.

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(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 bears the burden of proof in this matter. 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).

In order for Mr. Finch's absences to constitute misconduct that would disqualify him from receiving unemployment insurance benefits, the employer must show that the unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the employer must first show that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32-8. Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Courts are to construe the provisions of the unemployment compensation law liberally, and to interpret the unemployment compensation law's disqualification provisions strictly, to further the purpose of the law. See Bridgestone/Firestone, Inc. v. Employment Appeal Bd., 570 N.W.2d 85 (Iowa 1997).

The evidence in the record establishes that Mr. Finch's final absence from work on March 31, 2005 was an unexcused absence. The evidence further establishes that Mr. Finch's absence on February 28, 2005 was an unexcused absence. Mr. Finch's absence on March 8, 2005, was an excused absence for unemployment insurance purposes. The employer was within its legal right to discharge Mr. Finch. However, based on the evidence in the record and application of the law cited above, the administrative law judge is unable to conclude that Mr. Finch's unexcused absences were excessive. Accordingly, the administrative law judge concludes that Mr. Finch was discharged for no disqualifying reason, and is eligible for benefits, provided he is otherwise eligible.

#### DECISION:

The representative's decision dated June 8, 2005, reference 02, is affirmed. The claimant was discharged from his employment for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

jt/kjf