

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EDWARD B CARTER**  
Claimant

**APPEAL NO: 08O-UI-06646-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 05/04/08 R: 04**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Edward B. Carter (claimant) appealed a representative's June 4, 2008 decision (reference 02) that concluded he was not qualified to receive benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. A hearing was initially held on June 18, 2008. When neither party responded to the hearing notice, an administrative law judge made a decision based on information in the administrative record and affirmed the June 4 decision.

The claimant appealed the decision to the Employment Appeal Board. The Employment Appeal Board remanded this matter to the Appeals Section for a new hearing because the claimant had not received notice about the June 4 hearing. After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on August 5, 2008. The claimant participated in the hearing. The employer again failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The employer recruited the claimant from the Chicago area. When the claimant accepted employment at the Columbus Junction job site, he understood there would be housing nearby or within a mile of work. The claimant started working full time for the employer in mid-October 2007.

After the claimant moved to Iowa, he learned the closest housing was in Burlington about 45 miles from work. The employer provided a bus to transport employees living in Burlington to and from work. The claimant worked first shift.

The claimant understood the employer's attendance policy assessed employees points when they did not work as scheduled. If an employee did not call or report to work, they received three points. If an employee called when he was unable to work, he received one point. If an employee accumulated 14 points in a year, the employer discharged him for excessive absenteeism.

During his employment, the claimant accumulated points because he overslept or did not realize the bus changed the time to pick up employees. As of late April, the claimant had accumulated 10 or 11 attendance points. The claimant understood his job was in jeopardy because of the number of attendance points he had accumulated.

The evening of April 24, the claimant and his spouse had a domestic argument. The local police were called to the claimant's residence. The claimant was arrested and put into a correctional facility. On Friday, April 25, the claimant unsuccessfully attempted to contact the employer from the correctional facility. The claimant was scheduled to work Friday and Saturday, but was still incarcerated. The claimant was unable to use the phone at the correctional facility until Sunday. He again unsuccessfully attempted to contact the employer. After the claimant was released from the correctional facility on Monday morning, April 28, he called the employer. This time, the claimant learned the employer discharged him because he had accumulated too many attendance points. The employer assessed the claimant three points on Friday and Saturday, which meant he had accumulate more than 14 points by April 28.

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

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts do not establish that the claimant intended to quit his employment. Instead, the employer discharged the claimant for violating the employer's attendance policy.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant testified that Burlington was 90 miles from Columbus Junction. The administrative law judge takes judicial notice Burlington is about 45 miles from Columbus Junction or 90 miles for a round trip.

The claimant understood the employer's attendance policy and knew his job was in jeopardy when he was arrested on April 24, 2008. Before he was arrested, the claimant accumulated

attendance points prior to April 24 because he overslept after riding the bus an hour to get home after work. Since the claimant accepted housing in the Burlington area and rode the employer's bus to work, it was his responsibility to make sure he got on the bus in time to get to work as scheduled.

The claimant's off-duty conduct the evening of April 24 resulted in unexcused absences from work on April 25, 26 and 28. The claimant was absent from work these three days for reasons that do not constitute a reasonable excuse for failing to work as scheduled. Based on the claimant's repeated failure to work as scheduled and for violating the employer's attendance policy by accumulating more than 14 points, the employer discharged him for work-connected misconduct. As of May 4, 2008, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's June 4, 2008 decision (reference 02) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 4, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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