

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHNNY BROWN
Claimant

APPEAL NO. 08A-UI-02723-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 02/24/08 R: 03
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Johnny Brown filed an appeal from a representative's decision dated March 14, 2008, 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 April 3, 2008. Mr. Brown participated personally. The employer did not respond to the notice of hearing.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Brown was employed by Tyson from July 18, 2006 until February 26, 2008 as a full-time janitor. He was discharged because of his attendance. The final absence was on February 22 when he was absent because he did not have a ride to work. Mr. Brown missed at least three days in 2008 because he did not have a ride. He missed anywhere from six to eight days in 2007 due to lack of transportation.

Mr. Brown was verbally warned that he would be discharged if he continued to accrue absences. The employer never agreed to provide him with transportation to or from work. Attendance was the sole reason given him for the discharge.

REASONING AND CONCLUSIONS OF LAW:

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). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

Absences due to matters of purely personal responsibility, such as transportation, are not excused. Mr. Brown had missed at least three days of work during the first two months of 2008 because he did not have a ride to work. He also missed at least six days in 2007 because he did not have a ride. The administrative law judge considers the absences from both years to be excessive. Mr. Brown had been verbally warned about his attendance. The decision to discharge on Tuesday, February 26, was prompted by a current unexcused absence on Friday, February 22.

Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. Therefore, it is concluded that disqualifying misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated March 14, 2008, reference 01, is hereby affirmed. Mr. Brown was discharged by Tyson 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/pjs