

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVIE R SHULL SAUNDERS**  
Claimant

**APPEAL NO: 18A-UI-05339-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 04/15/18**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's unemployment insurance decision dated May 4, 2018, (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged from work on April 19, 2018, for excessive unexcused absenteeism after being warned. After due notice was provided, a telephone hearing was scheduled for and held on May 30, 2018. Claimant participated. Employer participated by Ms. Jean Spiesz, Human Resource Manager. Employer's Exhibits A through H were received into the hearing record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Stevie R. Shull-Saunders was most recently employed by West Liberty Foods, LLC from June 12, 2017 until April 19, 2018 when he was discharged from employment. Mr. Shull-Saunders was employed as a full-time production supervisor and was paid by salary. His immediate supervisor was Mr. Saul Carrillo.

Mr. Shull-Saunders was discharged on April 19, 2018 after he had called off work due to illness on April 16, 17, and 18, 2018.

The claimant had been placed on a performance improvement plan on January 11, 2018, after he had missed nine full shifts of work and ten partial shifts from June 12, 2017 until January, 2018. The claimant was warned at that time that his absences were impacting his performance as a supervisor and that he needed to improve the attendance over the next 30 days and that the improvement needed to be sustained thereafter to avoid being discharged from employment. On February 7, 2018, the claimant completed his performance improvement plan and was informed that the employer expected he would continue his improved attendance.

The claimant made a concerted effort to improve his attendance but called off for one half shift on February 19, 2018, regarding a medical visit for his son and called off work on February 26 and March 22 and 26, 2018 due to his personal illness. The final infractions that caused the claimant's discharge took place when the claimant called off work on April 16, 17, and 18, 2018, due to illness. Mr. Shull-Saunders properly followed the company's call off procedures.

The company does not have a specific attendance policy for supervisory personnel. Each case is considered on a case-to-case basis. The employer does not dispute the claimant was ill, but maintains that his absence from work negatively impacted his ability to perform his supervisory duties and was contrary to the employer's interests.

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(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 has the burden to prove the claimant was discharged for work connected misconduct as defined by the Unemployment Insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and wrongdoing, repeated carelessness or negligence that equals willful misconduct in culpability. 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 excuseable grounds for which the employee was absent and were properly reported to the employer. Iowa Administrative Code r.871.IAC 24.32(7). See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187, 190 (Iowa 1984).

In order for a claimant's absences to constitute misconduct that would disqualify a claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871.IAC 24.32(7). The determination whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish 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, lack of childcare, and oversleeping are not considered excused. Absences related to illness are considered excused, providing the employee has complied with the employer's policy regarding notifying the employer of the absence.

The evidence in the record establishes that Mr. Shull-Saunders was ill and did follow the employer's policy with respect to notification for his absences on April 16, 17, and 18, 2018. Based upon the evidence in the record and the application and the appropriate law, the administrative law judge concludes that the claimant was discharged under non-disqualifying conditions. Claimant's last absences were due to illness and were properly reported and did not constitute misconduct in connection with the work. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's unemployment insurance decision dated May 4, 2018, reference 01 is reversed. Claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn