

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONNIE W MOREHEAD
Claimant

APPEAL NO. 14A-UI-05380-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON RETAIL DELI MEATS INC
Employer

**OC: 04/27/14
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ronnie Morehead (claimant) appealed a representative's May 19, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Tyson Retail Deli (employer) for excessive unexcused absenteeism and tardiness after having been warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 26, 2014. The claimant was represented by Dennis McElwain, Attorney at Law, and participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 2, 2010, as a full-time power house worker. The claimant signed for receipt of the employer's handbook. The handbook indicated a worker could be terminated if he accumulated more than thirteen attendance points.

The claimant worked for seven days on first shift and had two days off. He rotated to second shift followed by third shift. The employer then gave him four days off. The cycle started again. Starting in January 2014, two workers had medical issues and the four remaining workers had to work twelve-hour shifts seven days per week. The claimant had to work every day from 2:00 a.m. to 2:00 p.m. The claimant no longer had any days off.

The employer issued the claimant a written warning in April 2014, for absenteeism. The employer notified the claimant that further infractions could result in termination from employment. The claimant was absent four times for properly reported medical issues. He had problems with his truck starting once. He was also absent five times due to personal issues. The claimant earned four points for absenteeism after the work shift changed in January 2014. On April 30, 2014, the claimant overslept and the employer terminated him on April 30, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant had to work every day without a day off since January 2014, or be assessed a point. Prior to January 2014, the claimant was allowed six days off every three weeks. After January 2014, the claimant had a total of five absences. The claimant's absences were not excessive when viewed against this backdrop. The employer did not participate in the hearing and, therefore, provided no evidence that the claimant's absences were excessive. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 19, 2014, decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css