

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC C STREEBY**

Claimant

**APPEAL NO: 13A-UI-02189-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 01/20/13**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's February 18, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing with his union representative, Tim Martin. Angie Stevens, a Human Resource Generalist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in May 2012. He worked as a full-time production employee. When the claimant started working, he received information about the employer's attendance policy. The policy informs employees that if they accumulate nine attendance points in a rolling calendar year, they will be discharged.

The claimant received one point for the following absences: June 1, July 27, August 17 and 31, September 7, November 2, December 14, 15 and 29. On August 31, the claimant fell in the employer's parking lot and injured himself. The employer's nurse examined the claimant and felt he could work. The claimant did not agree with the nurse's assessment and went home. Initially, the employer gave him two points for this absence, but later reduced it to one point. Another absence occurred when he went with his father to a cancer clinic. Another absence, November 2, occurred when his child was born.

On December 14, the claimant received a call from his child's maternal grandmother. The mother of the child was supposed to be taking care of the baby and her mother, but she was not at her mother's home and no one knew where she was at. The maternal grandmother is wheelchair bound and could not take care of the baby. The maternal grandmother called the claimant on December 14 asking him to help her. When the claimant could not find anyone to take care of his child, he called the employer to report he was unable to work on December 14.

The child's mother did not come back until the evening of December 15. Since the claimant did not know where or when the child's mother would return and he could not find anyone to stay with his child on short notice, he stayed home from work on December 15 to again take care of his child.

On December 17, the claimant received two written warnings. One warning was for his December 14 absence and the other warning was for the December 15 absence. After being absent on December 15, the claimant had accumulated eight attendance points.

The claimant had physical custody of his child from December 14 until early January. After December 15, he made arrangements with a friend to watch his child when he worked. The claimant told his friend he was scheduled to work on Saturday, December 29. The friend mixed up the date and thought she was supposed to take care of the baby the next Saturday, January 5. When the friend did not come to take care of the baby on December 29, the claimant called her and learned she was in Des Moines shopping. The claimant then called the employer to report he was unable to work on December 29.

The claimant did not have any medical documentation to give to the employer for his December 29 absence. Since this was his ninth attendance point in less than a year, the employer discharged him on December 31 for violating the employer's attendance policy.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)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 evidence establishes that when the claimant was absent, he properly reported his absence to the employer. The claimant provided reasonable explanations for his absences on December 14, 15 and 29. The claimant had no control over the mother of the child. The child's maternal grandmother called the claimant for help when her daughter failed to take care of her and the baby. Even though the claimant tried to find someone to take care of his child on December 14 and 15, he was not successful. On December 29, the claimant made arrangements with a friend to take care of his child. The friend inadvertently mixed up the weekend she was to take care of his child and she was not available to take care of his child on December 29. The claimant had not expected to be absent from work on December 14, 15 or 29. The claimant did not have control of situation that resulted in his absences on these days.

The evidence does not establish that the claimant committed work-connected misconduct. Even though the employer had justifiable business reasons for discharging the claimant, he did not commit work-connected misconduct. As of January 20, 2013, the claimant is qualified to receive benefits.

#### **DECISION:**

The representative's February 18, 2013 determination (reference 01) is reversed. The employer had justifiable business reasons for discharging the claimant, but he did not commit work-connected misconduct. As of January 20, 2013, the claimant is qualified to receive

benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/tll