

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARL NORMAN
Claimant

APPEAL NO. 10A-UI-10005-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

OC: 06/13/10
Claimant: Appellant (1)

Section 96.5-2-a - Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 13, 2010, reference 01, that held he was discharged for excessive unexcused absenteeism on June 14, 2010, and that denied benefits. A telephone hearing was held on August 31, 2010. The claimant participated. Rick Wood, HR Manager, participated for the employer. Claimant Exhibits A and B and Employer Exhibit 1 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant began employment on September 29, 2009, and last worked for the employer as a full-time night-shift quality assurance inspector on June 12, 2010. The claimant received the employer's attendance policy, which included he provide a doctor's excuse for any reported illness.

The claimant received six disciplinary warnings, including employment suspensions from March 3, 2010, to March 7, 2010, and final warning on May 22, 2010, for attendance issues. The claimant was suspended for three days on May 24 for a patterning of absences around weekends without providing a doctor's excuse. The claimant called in an absence due illness for work Sunday night June 13/Monday morning June 14, 2010. The claimant did not see a doctor about his illness (migraines). When the claimant reported to work the late evening of June 16, he was told not to clock in, because he had been terminated. The claimant canceled a doctor's appointment for June 17, and he failed to provide a doctor's excuse for his missing work.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on June 16, 2010, for repeated attendance policy violations and warnings.

The claimant denied in this hearing that his job was in jeopardy, but the employer's disciplinary warnings show he was warned and suspended from employment with a final warning that a further occurrence would result in termination. The claimant received the employer's attendance policy, which included a requirement he provide a doctor's excuse, because the employer recognized a pattern of illness around weekends.

It was not misconduct for the claimant to call in and properly report an absence due to illness on June 13/14. It was misconduct for the claimant's failure to provide a doctor's excuse based upon his choice not to see a doctor and canceling a doctor's appointment.

DECISION:

The department decision dated July 13, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on June 16, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw