

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TIMOTHY J LANG
3201 – 86TH ST APT 111
URBANDALE IA 50322

IOWA QUALITY MEATS LTD-ADP
2075 NW 92ND CT
CLIVE IA 50325

Appeal Number: 05A-UI-02076-SWT
OC: 01/23/05 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 23, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 15, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Diane Paige participated in the hearing on behalf of the employer with a witness, Gary Gray. Exhibit One was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a maintenance technician from March 1, 2004 to January 18, 2005. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to progressive discipline after having more than one

attendance occurrence in a 30-day period. On March 24, 2004, the claimant had received a verbal warning after being late on March 16 and absent due to illness on March 29. On July 14, 2004, the claimant received a written warning for being absent for personal reasons on June 24 and due to illness on July 6. On July 26, 2004, the claimant received a one-day suspension for the absence on July 6 and an absence due to illness on July 24. On September 13, 2004, the claimant received a one-day suspension for an absence due to illness on September 2 and reporting late for work on September 9, 2004. The claimant was informed that he was on the last stage of the progressive discipline policy. The claimant properly notified the employer when he was absent from work on the above dates.

The claimant was absent from work due to legitimate illness with proper notice to the employer on January 4 and 13, 2005. He was absent from work due to childcare problems on January 7. The claimant was feeling ill on January 19. He was also experiencing some personal and family problems. He called in properly and notified the employer that he was going to be late for work. Later, the claimant called and spoke to his brother who worked as a lead person for the employer. He informed his brother that he was not coming into work. His brother notified the supervisor.

The employer discharged the claimant under its attendance policy for excessive absenteeism. The claimant had been working seven days per week for several months, and as a result, was run down and not feeling well in January 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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(1)a, (7) provide:

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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(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.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. Willful and substantial misconduct has not been proven in this case. Nearly all of the claimant's absence occurrence were due to legitimate illness and were properly reported. The final instance of absence was at least in part due to illness and his absence was reported to his supervisor.

DECISION:

The unemployment insurance decision dated January 23, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise qualified.

saw/kjf