

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

QUINCY G HODGINS

Claimant

APPEAL NO: 12A-UI-14986-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 12/25/11

Claimant: Appellant (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 14, 2012 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge. The claimant did not respond to the hearing notice or participate in the hearing. Jamal Grcic, the human resource and payroll clerk, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes that based on the reasons for his employment separation the claimant is qualified to receive benefits as of November 25, 2012.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 10, 2012. He was hired as a probationary employee. During an employee's 90-day probation, he can only accumulate 3.5 attendance points. If an employee accumulates more attendance points, the employee has not satisfactorily completed his probation.

During the claimant's employment, he called in and was absent on October 11 and 25 for personal business. On October 29, the claimant was absent and called in sick. On October 30, the claimant presented the employer with a doctor's note indicating he needed to be off work until December 14. The claimant asked the employer for a medical leave of absence.

On November 2, the claimant called late to report he was ill and unable to work. On November 4, the claimant reported to work.

On November 14, 2012, the employer ended the claimant's employment because he had not satisfactorily completed his probation. He had more than 3.5 accumulated attendance points.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not establish that the claimant quit. Instead, the employer ended his employment.

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 Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer ended the claimant's employment because he did not satisfactorily complete his probation. He had too many absences. His absences were health related and the claimant tried unsuccessfully to request a leave of absence from October 30 until December 14, 2012. The claimant did not commit work-connected misconduct. Therefore, as of November 25, 2012, the claimant is qualified to receive benefits. (As of November 25, the administrative file indicates the claimant had requalified to receive benefits by earning more than \$2,390.00 from the employer.)

Since the claimant requested a leave of absence until December 14, 2012, the issue of whether the claimant was able to and available to work as of November 25, 2012, will be remanded to the Claims Section to determine.

The employer is not one of the claimant's current base period employers. During the claim year, December 25, 2011, through December 22, 2012, the employer's account will not be charged. If the claimant establishes a new benefit year, the employer's account may then be subject to charge.

DECISION:

The representative's December 14, 2012 determination (reference 03) is reversed. The claimant did not quit his employment. Instead, the employer discharged him for failing to satisfactorily complete his probation. The claimant did not commit work-connected misconduct. As of November 25, the claimant is qualified to receive benefits, provided he meets all other

eligibility requirements. Since the employer is not a base period employer on this claim year, the employer's account is not subject to charge during this claim year.

An issue of whether the claimant is able to and available for work as of November 25 is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll