

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES E DEMPSEY**  
Claimant

**APPEAL NO. 08A-UI-08056-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 08/03/08 R: 03  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, James Dempsey, filed an appeal from a decision dated September 9, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on September 24, 2008. The claimant participated on his own behalf. The employer, West Liberty Foods, participated by Human Resources Manager Jean Spiesz. Exhibits One and Two were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

James Dempsey was employed by West Liberty Foods from February 5, 2007 until August 11, 2008 as a full-time production worker. He received a copy of the employee handbook which sets out the attendance and progressive disciplinary policies. Attendance is tracked by occurrences and warnings are given at various levels of occurrences. Mr. Dempsey received warnings on April 9, June 24 and July 28, 2008, for attendance and was advised his job was in jeopardy. He missed work due to transportation and child care problems and some personal illness.

On August 8, 2008, he called his supervisor, Marvin Rung, to say he would be late. He then called back and said he would not be able to make it to work because his car had broken down. Mr. Rung said this might put him over the number of attendance occurrences and he should call Monday before coming to work. On August 11, 2008, Mr. Dempsey called and Mr. Rung said he had exceeded the ten point level of occurrences and was discharged under the company policy.

## 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(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.

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 claimant had been advised his job was in jeopardy as a result of his absenteeism. The majority of his occurrences were accumulated due to personal problems such as transportation and lack of child care which do not constitute excused absences. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). The final occurrence was also due to personal problems when his vehicle broke down. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

**DECISION:**

The representative's decision of September 9, 2008, reference 01, is affirmed. James Dempsey is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/pjs