

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON L MILES

Claimant

APPEAL NO. 11A-UI-04294-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 03/06/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed an appeal from a representative's decision dated March 29, 2011, reference 01, which denied benefits based upon his separation from West Liberty Foods, LLC. After due notice, a telephone hearing was held on April 27, 2011. Claimant participated personally. Participating as a witness was his wife, Sandra Miles. The employer participated by Ms. Monica Dyar, Human Resource Supervisor. Employer's Exhibits One through Four were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Aaron Miles was employed by West Liberty Foods from January 25, 2010 until February 25, 2011 when he was discharged for exceeding the permissible number of attendance infractions under the company's established attendance policy. Mr. Miles worked as a full-time dry storage attendant and was paid by the hour. His immediate supervisor was Paul McCormick.

Mr. Miles was discharged after he exceeded the permissible number of attendance infractions allowed under West Liberty Foods no-fault attendance policy. Under the policy employees are subject to discharge if they accumulate ten or more infraction points during a 12-month rolling period. Mr. Miles was aware of the policy and had been specifically warned about his attendance on January 17, 2011.

The claimant exceeded the permissible number of infractions when he was incarcerated and unable to report for work. The claimant, through his wife, had requested that some of the claimant's days of incarceration be allowed to be used as vacation time and the employer had complied. The claimant's absences on February 21, 24 and 25 had not been authorized as vacation days and caused the claimant to exceed the permissible number of infractions allowed under policy.

It is the claimant's position that the company, in error, had charged him an attendance point during a snow day and that one of the days listed as an attendance infraction point day was a day off. The claimant's further position that because his absences due to incarceration were for a single reason, he should have only been assessed one infraction point.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The Supreme Court of the state of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The Court held that the absences must be excessive and unexcused and that the concept included tardiness, leaving early, etcetera.

Inasmuch as the evidence in the record establishes that Mr. Miles had been warned and exceeded the permissible number of infractions due to incarceration, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that Mr. Miles' separation took place under disqualifying conditions. No contract for employment is

more basic than the right of the employer to expect employees to appear for work on the hour and day agreed upon and recurrent failure to honor an obligation evinces a substantial disregard for the employer's interests and thus justifies a finding of misconduct. Although Mr. Miles did not anticipate being incarcerated, he was incarcerated due to his own previous actions. The claimant's infractions exceeded permissible levels even when the snow day and a non-workday are factored in. Benefits are withheld.

DECISION:

The representative's decision dated March 29, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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