

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENYATTA D MONCRIEF**  
Claimant

**APPEAL NO. 13A-UI-02749-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 01/06/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the representative's decision dated February 28, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on April 3, 2013. The claimant participated personally. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Kenyatta Moncrief.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The claimant was employed as a cryo-operator and caser at the employer's plant in Mount Pleasant, Iowa. The claimant was a full-time employee. He was hired in June 2012. His last day of work was January 7, 2013. He was terminated on January 7, 2013.

The incident that led to the claimant's termination occurred on December 28, 2013. The claimant was late to work due to transportation problems. This tardiness placed him at ten points, which is termination under the employer's attendance policy. The claimant had no idea that he was that close to termination and had not had the meeting that is generally held with employees who have attendance problems. His prior absences were due to family emergencies and personal illness.

**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(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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such as transportation problems and oversleeping, is considered unexcused. See *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See *Higgins*, supra, and 871 IAC 24.32(7). The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The employer failed to participate in the hearing and provided no evidence of excessive unexcused absenteeism. A violation of the employer's attendance problem may or may not be misconduct, depending on the reason for the absence and whether the employer's notification process was followed. The bulk of the claimant's attendance problems appear to be due to family emergencies and personal illness,

which are excused absences. Since the employer has not shown excessive unexcused absenteeism, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated February 28, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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