

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUGUSTUS TARLUE
Claimant

APPEAL NO. 13A-UI-04748-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 03/17/13
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 10, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on May 28, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Ben Torres participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from July 11, 2012, to March 21, 2013. 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 discharge if they received 14 attendance points. Employees are assessed three points if they are absent without notice.

The claimant was issued a written warning on December 22, 2012, because he absent without notice on that day and was at nine attendance points.

The claimant went to the nurse on March 13 and complained of back pain. At first, the nurse gave him some Tylenol and told him to return to work. Later, when the claimant complained that he could not do his job, he was sent home by the nurse. The claimant attempted to see a doctor regarding his back pain, but the doctor would not treat him because the nurse had not given the claimant a workers' compensation form.

The claimant was absent from work with proper notice to the employer on March 14 and 15. He was absent from work without notice on March 18 and 19. He reported to work on March 20. When asked by the human resources manager why he had not called in on March 18 and 19, the claimant said he had totally forgotten to call. The human resources manager suspended the claimant on March 20 pending a review of his attendance. He was assessed three points each

for March 18 and 19, which put him at 15 points. As a result, the employer discharged the claimant on March 21, 2013.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the testimony of Ben Torres that the claimant was absent on March 18 and 19 without calling in and that the claimant told him that he had forgotten to call in those days.

The claimant's final absences were not properly reported and the claimant has not proved an excuse for his failure to call in. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated April 10, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css