

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW F POSTEL
Claimant

APPEAL NO. 15A-UI-03460-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/01/15
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 16, 2015, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on May 26, 2015. Claimant participated. The employer participated by Ms. Kristi Fox, Human Resource Clerk. Claimant's Exhibit One was admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Andrew Postel was employed by Tyson Fresh Meats, Inc. from November 19, 2012 until March 3, 2015 when he was separated from employment by the company because he failed to report for scheduled work or provide proper notification to the employer from February 25, 2015 through March 2, 2015.

Mr. Postel was absent from work because his adult daughter was ill. Mr. Postel initially requested to leave work early and was given permission to do so on February 25, 2015. Although the claimant had been given permission to leave work early that day, the claimant was expected to report for scheduled work thereafter or in the alternative, to report his impending absence each day prior to the beginning of the work shift by calling in to a specified telephone number to report his absence.

Although the employer did diligently check the answering machine equipment, the employer found no calls from Mr. Postel during the period in question and the claimant had not spoken to any individuals personally.

The company uses a “no fault” type attendance system. Parties are assessed infraction points for each absence, tardy or leaving work early. Failing to report or provide notification submits an employee to additional infraction points and company policy provides for the termination from employment for employees who fail to report or provide required notification.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep’t of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not

necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

There is no aspect of the contract of employment more basic than the right of an employer to expect employees will report for work on the day and hour agreed upon and repetitive failure to report for work or in the alternative provide required notification to the employer shows a willful disregard for the employer's interests and standards of behavior that the employer has a right to expect of its employees under the provisions of the Iowa Employment Security Law.

Although Mr. Postel's reasons for being absent for the period of February 25, 2015 through March 2, 2015 may have been good cause reasons, the claimant has not established good cause for his failure to notify the employer of his impending absences on a daily basis as required by company policy. Claimant's failure to call in showed a willful disregard of the employer's interests and standards of behavior.

While the administrative law judge is mindful that Mr. Postel maintains that he did call in on approximately two occasions, the employer's witness testified with specificity that no calls were received from Mr. Postel and that Mr. Postel had left no messages on the recorder for the telephone number provided to employees to report absences.

The administrative law judge concludes the employer has sustained its burden of proof in showing the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated March 16, 2015, reference 01, is affirmed as modified. The portion of the determination finding the claimant disqualified from the receipt of unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount is affirmed. The portion of the determination finding the claimant voluntarily quit is modified to find the claimant was discharged for misconduct in connection with his work. The decision is affirmed as modified.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs