IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RICHARD E JONES
906 WELLINGTON ST
WATERLOO IA 50702-2206

TYSON FRESH MEATS INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-07354-DWT
OC: 06/11/06 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Richard E. Jones (claimant) appealed a representative's July 17, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 10, 2006. The claimant responded to the hearing notice, but was not available for the hearing. A message was left for the claimant to contact the Appeals Section immediately if he wanted to participate in the hearing.

The claimant called the Appeals Section at 12:45 p.m. By the time the claimant contacted the Appeals Section, the hearing had been closed and the employer's witness, Elena Reader, had been excused. The claimant then requested that the hearing be reopened. Based on the claimant's request to reopen the hearing, the evidence, the arguments of the parties, and the

law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 23, 2003. The claimant worked as a full-time employee on the A shift. The claimant received a copy of the employer's attendance policy. The attendance policy informs employees they can be discharged if they accumulate 14 attendance points in a rolling calendar year.

During the last year of his employment, the claimant received a total of four attendance points on June 10, and August 31, 2005, January 7 and February 9, 2006, for reporting to work late. The claimant received four more attendance points on July 27, August 10, September 9, 2005, and May 4, 2006, for calling in sick. On August 11, the claimant received three attendance points for failing to call or report to work.

On June 8, the claimant notified the employer that he would be late for work. The claimant punched in at 1:37 p.m. and worked until the end of his shift. The employer's policy assesses employees one point if they notify the employer they will be late for work. The claimant received three attendance points because the employer treated the claimant as failing to report to work at all that day even though he punched in and worked. As a result of assessing the claimant three attendance points instead of one, the claimant accumulated 14 points as of June 8, 2006. The employer discharged the claimant on June 15 for violating the employer's attendance policy for excessive absenteeism.

The claimant responded to the hearing notice and provided the phone number at which he could be contacted for the August 10 noon hearing. The claimant attended a meeting at a local college the morning of August 10. The claimant had to leave his cell phone in his vehicle and forgot about the scheduled hearing. Although the claimant went to the college between 10:30 and 11:00 a.m., he did not finish with his meeting with college officials until around 12:45 p.m. When the claimant noticed he had missed call, he remembered the hearing and contacted the Appeals Section. The claimant made a request to reopen the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

In this case, the claimant timely responded to the hearing notice, but was not available for the scheduled hearing. It is understandable that the claimant forgot about the hearing or decided

keeping an appointment that related to going to college took priority over the hearing. If the claimant had remembered when the hearing was scheduled, he could have contacted the Appeals Section prior to the hearing to request a postponement because of a potential conflict. The claimant did not make such a postponement request. While the claimant had compelling personal reasons for not being available for the scheduled hearing, he did not establish good cause to reopen the hearing.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The evidence establishes that even though the claimant had a number of attendance points for being sick or late for work during the last year, he did not violate the employer's attendance policy. The facts indicate the claimant reported to work late as he told the employer he would on June 8. Even though the claimant punched in for work, the employer assessed the claimant three attendance points for not reporting to work at all on June 8, 2006. According to the employer's policy, the claimant should have only been assessed one attendance point which would have meant he had 12 not 14 accumulated attendance points as of June 8, 2006. The facts do not establish the claimant violated the employer's attendance policy or committed work-connected misconduct. As of June 11, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The claimant's request to reopen the hearing is denied because he did not establish good cause for being unavailable for a scheduled hearing. The representative's July 17, 2006 decision (reference 01) is reversed. The employer discharged the claimant, but the employer did not establish that the claimant committed work-connected misconduct. As of June 11, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs