

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONOVAN J MILES

Claimant

APPEAL NO. 12A-UI-01669-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 01/08/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Donovan J. Miles filed a timely appeal from an unemployment insurance decision dated February 15, 2012, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held March 7, 2012 with Mr. Miles participating. Exhibit A was admitted into evidence on his behalf. Assistant Human Resources Manager Teri Wray participated for the employer.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Donovan J. Miles was hired by Tyson Fresh Meats, Inc. on April 11, 2011. He worked as a skilled laborer. Mr. Miles took three medical leaves of absence during his employment because of a serious health condition of his son. The last leave of absence began October 31, 2011. Assistant Human Resources Manager Teri Wray told Mr. Miles that he was expected to return to work November 21, 2011. Mr. Miles did not do so and did not contact the company. The employer discharged Mr. Miles for poor attendance on December 15, 2011 because of his absences without contact beginning November 21, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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.

Excessive, unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to personal illness or the serious illness of a family member can be excused, provided the individual properly reports the absence to the employer. See Higgins and 871 IAC 24.32(7).

The evidence persuades the administrative law judge that the company had placed Mr. Miles on notice that he was to return to work on November 21, 2011. His absences without contact beginning that day must be considered unexcused for unemployment insurance purposes. The administrative law judge concludes that the evidence establishes excessive, unexcused absenteeism. Benefits must be withheld.

DECISION:

The unemployment insurance decision dated February 15, 2012, reference 01, is affirmed. 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, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs