

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DERELL K GREEN

Claimant

APPEAL NO. 07A-UI-08593-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC

Employer

**OC: 08/12/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Beef Products, Inc. (employer) appealed a representative's September 4, 2007 decision (reference 01) that concluded Derell K. Green (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 24, 2007. The claimant participated in the hearing. Rick Wood, the human resource manager, testified on the employer's behalf. Charlene Schuman was present, but did not testify. Based on 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on March 8, 2007. The employer hired the claimant to work as a full-time laborer. The employer informed the claimant that if he accumulated 14 attendance points in a rolling calendar year, he would be discharged for excessive absenteeism or for violating the employer's attendance policy.

During his employment, the claimant received one point for each of the following absences: March 16; March 25/26; April 2/3; April 6/7; April 10/11; April 13; April 27; May 12 through 15; May 17; and on June 2, he left work early. With the exception of one time, these absences occurred because the claimant was ill. The claimant received the other attendance points because a family member was ill. After the claimant became ill at work, he left work early on June 2; the employer gave him a written warning. The warning informed the claimant he had accumulated ten attendance points and his job was in jeopardy. If the claimant accumulated four more points, he would be discharged.

The claimant received an attendance point when he called in sick on June 27/28. He received another attendance point when he called in sick on July 31, 2007. As of August 1, the claimant had accumulated 12 attendance points.

On August 8, the claimant's car was involved in a hit-and-run accident. Before the accident, the claimant's car had been stolen. The local police department brought the claimant in for questioning around 10:30 a.m. on August 8. Even though the claimant told the police his car had been stolen, they did not release the claimant until 8:30 p.m. on August 8. The claimant was scheduled to report to work at 3:00 p.m. The claimant had his girlfriend contact the employer. She informed the employer that the claimant was being held by the police and would not be at work as scheduled. Wood talked to the claimant's girlfriend and understood the claimant was incarcerated. Based on this understanding, the employer assessed him three attendance points for this absence.

The claimant was not charged and has not been charged with anything associated with the hit-and-run accident. When the claimant went to work the next day, he gave the employer paperwork with the officer's name and phone number to verify he had been held for questioning, but had not been incarcerated. The employer did not change the claimant's accumulated attendance point. As a result of the August 8 absence and the three points the employer assessed the claimant, the employer discharged the claimant because he had accumulated a total of 15 attendance points as of August 9.

REASONING AND CONCLUSIONS OF LAW:

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

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).

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. 871 IAC 24.32(8).

The employer established business reasons for discharging the claimant. The evidence does not, however, establish that the claimant intentionally and substantially did not work as scheduled. The primary reason the claimant accumulated so many attendance points was because he was ill. The claimant properly notified the employer when he was ill and unable to work. In early June, the claimant understood his job was in jeopardy. The claimant's most recent absence on August 8 was beyond his control. The claimant had no control of when the police would release him from questioning after his stolen car and involved in a hit-and-run accident. Since the claimant's girlfriend had previously called in when he was ill and unable to

work without any problem, the claimant was not put on notice that when she called in on his behalf on August 8, the employer would give the claimant three points instead of one. Even though the police held the claimant for questioning, he was not incarcerated. The claimant's most recent absence on August 8 does not constitute work-connected misconduct. Since his previous absences were reported because he was ill, the claimant did not work intentionally fail to work as scheduled. The claimant did not commit work-connected misconduct. As of August 12, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 4, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 12, 2007, 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css