

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DESHUN M WILSON
Claimant

APPEAL NO. 10A-UI-07036-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

**Original Claim: 04/11/10
Claimant: Respondent (1)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated May 5, 2010, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 1, 2010. The claimant participated. The employer participated by Jessica Sheppard, human resources associate. The record consists of the testimony of Jessica Sheppard; the testimony of Deshun Wilson; and Employer's Exhibits 1 through 15.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a pork producing facility located in Ottumwa, Iowa. The claimant was hired on June 8, 2009, as a full-time production worker. He was terminated on April 9, 2010, for violation of the employer's attendance policy. The employer has a no-fault attendance policy that calls for termination when a worker reaches ten attendance points. One point is assessed if the employee is absent but properly reports the absence. Two points are assessed if there is a no-call/no-show. One-half point is given for being late to work or leaving early.

The incident that immediately preceded the claimant's termination occurred on April 7, 2010. The claimant was absent due to what he called a "court situation." Prior to April 7, 2010, the claimant received points on November 7, 2009; October 14, 2009; October 8, 2009; September 16, 2009; September 14, 2009; August 25, 2009; August 12, 2009; July 6, 2009; and June 17, 2009. The majority of the claimant's absences were for reasons other than personal illness.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. 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 matters of "personal responsibility", e.g. transportation problems and oversleeping is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant was terminated because he violated the employer's no-fault attendance policy. He accumulated ten points within a calendar year and, pursuant to the employer's policy, he was terminated. Before the claimant can be disqualified from receiving unemployment insurance benefits, however, the employer must do more than simply show that the attendance policy was violated. The employer must show excessive, unexcused absenteeism.

The claimant's final attendance point was given on April 7, 2010. The claimant's absence was due to personal matters and could be considered unexcused. However, prior to April 7, 2010,

the claimant had not been absent since November 7, 2009. His points go all the way back to June 17, 2009. The claimant was not certain why he was absent on most the days listed, although he did have an injury at home that accounted for at least one absence.

After carefully reviewing the evidence, the administrative law judge concludes that the employer has not shown excessive, unexcused absenteeism. There was almost a five-month gap between the final two absences. Most of the absences are too remote in time to be considered misconduct. Since there is insufficient evidence to establish misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated May 5, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw