

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES M CROW

Claimant

APPEAL NO. 07A-UI-06657-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC

Employer

**OC: 06/10/07 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 26, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 23, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Rick Wood participated in the hearing on behalf of the employer with witnesses, Charlene Schuman and Jennifer Stubbs.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a laborer for the employer from July 27, 2006, to June 6, 2007. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they received 14 attendance points in a 12-month period.

On October 30, 2006, the claimant received one point because he was sick and called in properly. On November 4, 2006, the claimant received three points because he was sick but did not call in properly. He received counseling for failing to call in properly. On November 10, 2006, the claimant received three points because he was absent without notice to the employer. He received a written warning because he had seven points and failed to call in. On December 2, 2007, the claimant had two flat tires on his way to work and was not able to report to work or call in promptly. He received three points and a written warning for this incident.

On December 24, 2006, the claimant received one point because he was sick and called in properly. On December 31, 2006, the claimant received one point because he was sick and called in properly. On February 24, 2007, the claimant received one point because he was unable to report to work due to severe weather and called in properly.

On June 7, 2007, the claimant was sick and unable to work due to legitimate illness. He called in promptly and was excused from working by a doctor. The employer discharged the claimant on June 7 because he had violated the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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(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.

While the employer may have been justified in discharging the claimant under its attendance policy, work-connected misconduct as defined by the unemployment insurance law has not been established. No current act of work-connected misconduct has been proven, because the claimant's final absence was due to legitimate illness and was properly reported.

DECISION:

The unemployment insurance decision dated June 26, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw