

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOVAN WEBB
Claimant

APPEAL NO: 14A-UI-08455-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 07/20/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 6, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 4, 2014. The claimant participated in the hearing. Kristi Fox, Human Resources Clerk, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Tyson Fresh Meats from January 21, 2013 to June 24, 2014. He was discharged for a no-call no-show absence.

The claimant sustained a work-related injury to his ankles in April or May 2014 and was scheduled to have surgery sometime during the summer of 2014. The employer documented that the claimant was a no-call no-show June 13, 14, 15, 19, 20, 21 and 22, 2014. The claimant testified he returned to work June 12, 2014, but was sent home because the employer stated he was a no-call no-show during his previous absence June 5 through June 10, 2014, and the resulting three attendance points placed him at 11 total points, one more than allowed. The claimant stated he was sent home June 13, 2014, and told the employer would contact him about his attendance points but he did not hear from the employer again. Consequently, the claimant believed his employment was terminated. The employer agrees the claimant was discharged but states the separation occurred June 24, 2014, because the claimant failed to call or show up for work for five consecutive workdays from June 13 through June 20, 2014. The claimant denies that was the reason for his termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused. The claimant was off work for several days due to a work-related injury. He returned to work with a doctor's note June 13, 2014, but was not allowed to resume working because the employer stated he was a no-call no-show during one of his absences from June 5 through June 12, 2014. The claimant denies that he was a no-call no-show during that period of time or after. He credibly testified the employer told him that no-call no-show absence caused him to exceed his allowed number of attendance points and the employer would have to review his attendance record and then get back to the claimant. Consequently, the claimant went home to await the decision but did not hear from the employer. He did not know his employment was terminated until he received a letter from the local courthouse about unpaid fines that had been directly debited from the claimant's account until he stopped receiving paychecks from the employer. It was reasonable for the claimant not to call and notify the employer of his absences beginning June 13, 2014, because the employer sent him home and would not allow him to return to work when he was able to do so. Under these circumstances, the administrative law judge must conclude the claimant did not abandon his job or form the requisite intent to quit his job. His employment was reportedly terminated due to the no-call no-show absence that the claimant credibly denied. The employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 6, 2014, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs