

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NDORI R CRISPIN
Claimant

APPEAL NO: 11A-UI-08658-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 05/29/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2) - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 21, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Eloisa Baumgartner, the employment manager, appeared on the employer's behalf. B.R. interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in May 2009. The claimant worked as a full-time employee. The claimant received the employer's attendance policy. The attendance policy informed employees they could be discharged if they accumulated 14 attendance points in a calendar year. Even though the claimant received a copy of the employer's policy, he did not understand the attendance policy. English is not the claimant's primary language.

The employer gives ½ point for reporting to work late. An employee receives one point for calling in sick or taking personal days off from work. The employer does not give an employee any attendance points if the employee asks the employer a day in advance if he can have time off for medical appointments.

On May 9, 2011, the employer gave the claimant a written warning for having 11 points. The claimant asked his supervisor for an interpreter so he could understand what the warning said. The employer did not get an interpreter for the claimant. The claimant did not realize his job was in jeopardy for attendance issues.

On May 13, the claimant received a half point for reporting to work late. He received one point on May 20 for notifying the employer he was ill and unable to work. The claimant has a medical

condition and it started bothering him on May 20. The claimant continued feeling ill and made an appointment at a hospital on May 27.

The claimant called the employer the morning of May 27, to report he was unable to work as scheduled later that day. The claimant had a doctor's appointment to get his medical condition under control. The point the claimant received for being absent on May 27 meant he had accumulated too many attendance points, 14.5. The employer discharged the claimant on June 1 for violating the employers' attendance policy by having too many attendance points in a calendar year.

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 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).

The employer established justifiable business reasons for discharging the claimant. Based on the employer's policy, the claimant violated it by getting too many attendance points in a year. Eight of the claimant's attendance points occurred because the claimant had called in sick or was late for work. The facts do not establish the claimant intentionally failed to work as scheduled. He did not substantially disregard the employer's interests because he called when he was unable to work. The two most received absences occurred because the claimant was ill and a medical appointment he needed to go to in an attempt to remain healthy. Since the claimant properly reported his absences and recently was absent because of his medical issues, the claimant did not commit work-connected misconduct. As of May 29, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's June 21, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of May 29, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs