

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW J SANKEY
Claimant

APPEAL NO. 15A-UI-09741-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HORMEL FOODS CORPORATION
Employer

OC: 08/02/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Hormel Foods Corporation (employer) appealed a representative's August 18, 2015, decision (reference 01) that concluded Andrew Sankey (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 16, 2015. The claimant participated personally. The employer was represented by Diana Perry-Lehr, Hearings Representative, and participated by Frank Velazquez, Human Resources Manager, and Melissa Silvia, Claim Specialist.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 19, 2011, as a full-time boxer. The claimant signed for receipt of the employer's handbook on July 19, 2011. The handbook has a descending point system from eleven points. If a worker has "0" attendance points, he will be terminated. A worker is able to earn points back. The claimant earned 135 attendance points back in 2014. On October 9, 2013, and December 17, 2014, the employer issued the claimant written warnings for attendance. The employer notified the claimant that further infractions could result in termination from employment. The claimant was late for work on October 11, 2013, and May 22, 2014. He was absent due to emergencies three times. He properly reported absences due to medical issues eight times. On April 17, 2015, the claimant did not appear for work and did not report. With that absence he had no attendance points remaining. The employer terminated him for excessive absenteeism.

The claimant filed for unemployment insurance benefits with an effective date of August 2, 2015. The employer did not participate in the fact-finding interview on August 17, 2015, because it did not know about the interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

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(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The absences due to properly reported medical issues are not misconduct and must be eliminated from the analysis. The employer was unaware of the circumstances involved with the three emergency situations. Without information, they must be taken at face value and assumed to be emergencies. The claimant's absences for emergencies were not willful and deliberate and cannot be considered misconduct.

That leaves two incidents of tardiness and one improper report. The tardiness occurred on October 9, 2013, and December 17, 2014, long before the final incident on April 17, 2015. Repeated failure to follow an employer's instructions in the performance of duties is misconduct.

Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant's absenteeism does not show a repeated pattern or failure to follow instructions. The claimant was discharged but there was no misconduct.

DECISION:

The representative's August 18, 2015, decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs