

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELO M BUTLER
Claimant

APPEAL NO. 10A-UI-05950-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/21/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 16, 2010, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on June 9, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from September 2008 to March 24, 2010. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer 30 minutes before the start of their shift 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. The claimant had been warned regarding his attendance.

The claimant does not have a valid driver's license. On March 21, 2010, the claimant's fiancée needed to go to the hospital on an emergency basis. Despite the fact that he knew he was barred from driving, the claimant drove the car to the hospital, but he was stopped by the police. He was arrested and put in jail. He was scheduled to work at 4:30 p.m. The claimant was not released from jail until 7:00 p.m. He did not report to work or notify the employer about his being absent from work that day.

He was discharged on March 24, 2010, because his absence from work without proper notice to the employer put him over the point limit under the 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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of the attendance policy was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant's absence on March 22 due to being in jail was unexcused. He caused the absence by driving without a license. In addition, he violated the employer's rules by failing to notify the employer that he would not be at work. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated April 16, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs