

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES L JOHNSON**  
Claimant

**APPEAL NO: 07A-UI-07711-D**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACH FOOD CO INC**  
Employer

**OC: 07/08/07 R: 02  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Charles L. Johnson (claimant) appealed a representative's August 1, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from ACH Food Company, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on August 28, 2007. The claimant participated in the hearing. William Nelson appeared on the employer's behalf. During the hearing, Employer's Exhibits One through Four were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 5, 2007. He worked full time as a line operator in the employer's Ankeny, Iowa spice packaging operation. His regularly scheduled hours were 5:00 a.m. to 3:30 p.m. Monday through Thursday; however, since shortly after he began his employment the employer had imposed mandatory overtime of additional work on Friday and Saturday from 5:00 a.m. to 3:30 p.m. and Sunday from 7:00 a.m. to 3:30 p.m.

The claimant was aware that during his probationary period he could only have two absences, and that a third occurrence would result in termination. He had absences on April 30 and June 5 due to illness, for which he had received warnings reminding him of the three occurrence policy. On the evening of June 20 the claimant had an argument with his girlfriend with whom he lived and shared a vehicle. She left their home with the vehicle at approximately 10:00 p.m., after which the claimant went to bed to get some sleep before getting up around 4:15 a.m. for work the next morning, hoping that she would have returned by then. When he awoke and got up on the morning of June 21, the girlfriend had not returned. The claimant then realized that he had no transportation to get to work on time. He further realized that by the time he might be able to procure other transportation, it would be after the 5:00 a.m. start of his shift, and that any

tardy would be treated as a third occurrence, which would have resulted in his discharge. He therefore determined not to attempt to report for work, and was a no-call, no-show. The employer concurred that even if the claimant had obtained other transportation and reported to work late that day, he would have been discharged. The employer subsequently confirmed to the claimant by letter dated June 22 that his employment was terminated.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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.

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(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.

Absences due to issues that are of purely personal responsibility such as transportation are not excusable. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984); Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The claimant's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's August 1, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 21, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs