

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID MCCARTNEY

Claimant

APPEAL NO. 14A-UI-01132-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 01/05/14

Claimant: Appellant (1)

Section 96.5(2) – Discharge

STATEMENT OF THE CASE:

The claimant, David McCartney, filed an appeal from a decision dated January 24, 2014, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 20, 2014. The claimant participated on his own behalf. The employer, Tyson, participated by Human Resources Manager Ben Torres.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

David McCartney was employed by Tyson from February 27, 2012 until January 7, 2014 as a full-time employee. His usual start time was 7:00 a.m. but starting December 11, 2013, he was substituting for another employee who was on medical leave. The start time for that employee was 5:00 a.m. and the claimant's time records show he did punch in around 5:00 a.m. starting December 11, 2013

On December 17, 2013, he called in sick at 6:45 a.m. The company policy requires employees to call in at least 30 minutes before the start of the shift to report any absences. Human Resources Manager Ben Torres interviewed the claimant several times about the incident after he was suspended pending further investigation. Mr. McCartney maintained his start time was 7:00 a.m. and he called in at 5:40 a.m. The claimant's supervisor was also interviewed and stated the start time was 5:00 a.m. for the shift being covered in the absence of the employee on medical leave.

The claimant was discharged on January 7, 2014, after the investigation was completed. He had exceeded the allowable number of attendance points. He had received a prior warning regarding his point accumulation and knew the allowable level of points before discharge would occur.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The claimant had been advised his job was in jeopardy as a result of his absenteeism. He was aware of the policy which requires an employee to call at least 30 minutes before the start of the shift to report an absence.

Mr. McCartney vigorously denied his start time was 5:00 a.m. but he had been punching in at that time for a week before and for a week after the date in question. The administrative law judge does not find the claimant's explanation credible that some other employee asked him to come in early to help for a few days when that other person was not a supervisor and he did not have the approval for this from the person who was, in fact, his supervisor.

The claimant did not properly report his absence on December 27, 2013, because he called in more than an hour after the start of the shift. This resulted in three points which put him at the discharge level. He was fired for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

DECISION:

The unemployment insurance decision dated January 24, 2014, reference 01, is affirmed. David McCartney is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs