

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J ACKLEY
Claimant

APPEAL NO. 11A-UI-12772-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RICHELIEU FOODS INC
Employer

OC: 08/28/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated September 19, 2011, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on October 20, 2011. The claimant participated personally. The employer participated by Mr. Dale Akkerman, first shift supervisor/production manager. Employer's Exhibits 1 through 8 were offered into evidence. Exhibit 8 was received.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Michael Ackley was employed by Richelieu Foods from September 20, 2010, until August 23, 2011, when he was discharged for exceeding the permissible number of attendance infractions under the company's no-fault attendance policy. Mr. Ackley worked as a full-time sanitation worker, working 10:00 p.m. until 6:30 a.m. His immediate supervisor was Dave Pierce.

Under the company's "no fault" attendance policy, employees are subject to discharge if they accumulate a set number of attendance occurrences and/or days of absence. Mr. Ackley was aware of the policy and had received a verbal warning on May 18, 2011; a written warning on July 14, 2011; and a second written warning and suspension on July 15, 2011. The company had worked with Mr. Ackley by allowing him to have occurrences and be absent for days over the limit; however, the claimant was discharged after he was required to leave early on August 23, 2011, due to illness, and was unable to report for work on August 24, 2011, due to a verified medical condition. The claimant offered to supply medical documentation to the company but was discharged under the company's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged under non-disqualifying conditions.

The employer has the burden of proof in establishing disqualifying job misconduct. See Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. See Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). Misconduct serious enough to warrant a discharge is not necessarily always serious enough to warrant the denial of job insurance benefits. Such misconduct must be “substantial.”

The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that excessive unexcused absenteeism is a form of job misconduct. The Court held that it must both be excessive and unexcused and that the concept included tardiness, leaving early, etc. The Court further held, however, that absence due to illness or other excusable reasons is deemed excused if the employee properly notifies the employer.

In this case, the evidence establishes that the claimant’s most recent attendance infractions took place because he was ill and unable to continue working. The evidence establishes that Mr. Ackley provided proper notice to the employer of his need to leave early on August 23, 2011, and provided notice of his inability to report for work due to illness on August 24, 2011. The claimant also offered to provide medical documentation supporting his contention that he could not report to work because of illness. While the decision to terminate Mr. Ackley from his employment may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the evidence in the record does not establish intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative’s decision dated September 19, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw