

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SEAN A CAMPBELL
Claimant

APPEAL NO. 12A-UI-00428-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

**OC: 12/04/11
Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation filed a timely appeal from an unemployment insurance decision dated January 6, 2012, reference 01, that allowed benefits to Sean A. Campbell. After due notice was issued, a telephone hearing was held February 9, 2012 with Mr. Campbell participating. Hiring Supervisor Ben Wise participated for the employer. Employer Exhibit One was admitted into evidence. The administrative law judge takes official notice of agency benefit payment records.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Sean A. Campbell was employed by Cargill Meat Solutions Corporation from March 21, 2011 until he was discharged December 2, 2011. He was discharged because of poor attendance. Mr. Campbell was absent without contact on November 26, 2011. He was tardy on November 12, 2011. He was absent on October 29, 2011 due to illness, but he did not contact the employer until one-half hour after his shift began. He was required to contact the company at least 30 minutes before the shift began. Mr. Campbell had been absent or tardy on prior occasions. He received several warnings concerning his attendance.

He has received unemployment insurance benefits since filing a claim effective December 4, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

Excessive unexcused absenteeism, a concept that includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to illness is considered excused provided the individual properly reports the absence to the employer. See Higgins and 871 IAC 24.32(7).

The evidence in this record establishes three unexcused absences during the last month of Mr. Campbell's employment. These occurrences viewed in the context of prior occurrences and warnings is sufficient to establish excessive unexcused absenteeism. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether the claimant must repay the benefits he has received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated January 6, 2012, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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