

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ALEJANDRO GALVAN
2250 TEMPLE AVE
WATERLOO IA 50702**

**BEEF PRODUCTS INC
891 TWO RIVERS DR
DAKOTA DUNES SD 57049-5150**

**Appeal Number: 04A-UI-03557-ET
OC: 02-29-04 R: 03
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 23, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 20, 2004. The claimant participated in the hearing. Rick Wood, Human Resources Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time laborer for Beef Products Inc. from August 30, 2001 to February 27, 2004. On February 20, 2004, the claimant requested the week of February 23, 2004, off work because his aunt, who was "like (his) sister," was extremely ill in Texas and he wanted to visit her. Human Resources Manager Rick Wood told the claimant to speak to Superintendent Brian Clemens. Mr. Clemens stated he could have February 23 and 24, 2004, off work but had to return February 25, 2004. The claimant said he needed a full week because it was a 24-hour drive but he would let the employer know if he was going to accept the two days off. He called later that day and said he would be in February 23, 2004, and would talk to the plant manager about taking the following week off. The claimant was notified his aunt passed away February 22, 2004, and consequently he drove to Texas at that time. He called the employer one hour before the scheduled start of his shift February 23, 2004, and said he was in Texas and would be absent that week. The claimant returned to work March 1, 2004, and the employer told him it considered him to have voluntarily quit his job by failing to call or show up for work February 25, 26 and 27, 2004.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the employer maintains the claimant quit by failing to call or show up for work February 25, 26 and 27, 2004, the claimant called February 23, 2004, and told the employer he would not be in that week. He did not evince an intention to voluntarily quit his job. The claimant was not asking for time off on short-notice to take a routine vacation but because a close family member was critically ill. Although he originally told the employer he planned to be at work February 23, 2004, his aunt passed away over the weekend and he left for Texas at that time. It was not reasonable for the employer to expect the claimant to make the 24-hour drive to Texas, attend the funeral, make the return 24-hour drive and be back at work February 25, 2004. Although the employer did not give the claimant permission to be absent February 25, 26 and 27, 2004, he had a good cause reason for his absences on those dates and the employer was aware of the circumstances regarding his absences. Consequently, the administrative law judge cannot conclude the claimant voluntarily left his job or that his absences the week of February 23, 2004, constitute disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The March 23, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjf