

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**DANIEL D MANYOK**  
Claimant

**APPEAL NO. 19A-UI-03168-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEABOARD TRIUMPH FOODS LLC**  
Employer

**OC: 03/10/19**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Daniel Manyok (claimant) appealed a representative's April 12, 2019, decision (reference 05) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Seaboard Triumph Foods (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 6, 2019. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in October 2018, for a second period of employment as a full-time production worker. He worked Mondays through Fridays. If the employer wanted him to work on Saturdays, it would tell him on Friday. The claimant received the employer's handbook when he was hired. The employer did not want employees to work if they were ill. It did not issue him any warnings.

On March 8, 2019, the claimant had the flu and properly reported his absence. The claimant was not at work on Friday and did not know the employer wanted him to work on Saturday. He did not have money to pay his cellphone bill and could not use his phone after March 9, 2019. The claimant went to the doctor on March 11, 2019, and was excused from work. On March 12, 2019, the claimant was still sick. On March 13, 2019, he returned to work with his doctor's note. The employer terminated the claimant for failure to appear for work or report his absence on March 9, 11, and 12, 2019.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was an improperly reported illness which occurred on March 9, 11, and 12, 2019. The claimant's absence does amount to job misconduct because it was not properly reported. The claimant was discharged for misconduct. He is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's April 12, 2019, decision (reference 05) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs