

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDGAR D LUGO

Claimant

APPEAL NO. 14A-UI-01131-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 01/05/14

Claimant: Appellant (2)

Section 96.5(2) – Discharge

STATEMENT OF THE CASE:

The claimant, Edgar Lugo, filed an appeal from a decision dated January 28, 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 and Ike Rocha acted as interpreter. The employer, Tyson, provided the name and telephone number of a witness. That number was dialed at 8:00 a.m. and the only response was a voice mail.

A message was left indicating the hearing would proceed without the employer's participation unless a witness contacted the Appeals Section prior to the close of the record. By the time the record was closed at 8:16 a.m. the employer had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

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

FINDINGS OF FACT:

Edgar Lugo was employed by Tyson from 2012 until January 7, 2014 as a full-time production worker. He was 15 minutes late on January 3, 2014, and fired four days later because he had accumulated too many attendance points. Mr. Lugo maintained he had never received any warnings or notices about his point total. He acknowledged he had been hospitalized in November and early December 2013, but had been told by the employer those absences would not be counted against him.

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.

The claimant's testimony established that he was late to work on one occasion, had excused absences when he was hospitalized and never received any warnings regarding absenteeism. The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The employer did not participate in the hearing to provide any evidence or testimony regarding any excessive, unexcused absenteeism which prompted the discharge. The employer did not meet its burden of proof and disqualification may not be imposed.

DECISION:

The unemployment insurance decision dated January 28, 2014, reference 01, is reversed. Edgar Lugo is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs