

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL C RAPER
Claimant

APPEAL NO. 10A-UI-15271-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSCEOLA FOODS CORPORATION
Employer

**OC: 10/03/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 29, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 14, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. John Kilpatrick participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a production team member from May 19, 2008, to September 27, 2010. He was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled.

In 2010, the claimant received an attendance warning and a suspension after he was absent on January 20, February 4, April 12, and May 4 and 5. The May 4 and 5 absences were no call, no shows, which led to the claimant being suspended from May 10 to 14. The claimant was placed on a last chance agreement on May 17 that he could not have any further attendance problems.

The claimant was absent for part of his shift on July 29 and 30. He left work early on September 16 due to illness. On September 17, the claimant called in because his son was sick. The employer then reviewed the claimant's attendance and decided he would be discharged for violating the last chance agreement.

The claimant worked the week of September 20 to 24, while the employer conducted the disciplinary review. He left work early on September 27 and was absent on September 28 due to illness, with proper notice to the employer and supported by a doctor's excuse. These absences were not considered when the claimant was discharged on September 29.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

871 IAC 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 evidence establishes the claimant's absences on September 16 and 17 were for legitimate reasons and were properly reported to the employer. No current act of work-connected misconduct has been proven.

DECISION:

The unemployment insurance decision dated October 29, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs