

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON D FOX

Claimant

APPEAL NO. 12A-UI-04988-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 04/08/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 26, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on May 22, 2012. Claimant participated. The employer participated by Mr. Jim Hook, Human Resource Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Brandon Fox was employed by Tyson Fresh Meats Inc. from June 13, 2011 until April 6, 2012 when he was discharged from employment. Mr. Fox worked as a full-time production worker and was paid by the hour.

The claimant was discharged on April 6, 2012 after he had exceeded the company's excessive absenteeism policy. Mr. Fox was aware of the policy and had received a final warning on January 5, 2012 informing him that his absences were excessive and his employment was in jeopardy.

The claimant's final attendance infraction took place on March 31, 2012 when the claimant cited "personal business" as the reason for leaving work prior to the beginning of the work shift. The claimant left work prior to beginning the shift that day due to a personal issue concerning his son.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is one form of job misconduct. The Court held that the absences must be both excessive and unexcused and that the concept includes tardiness, leaving early, etcetera.

In this matter the claimant was discharged after he exceeded the permissible number of attendance infractions allowed under company policy. Mr. Fox was aware that his employment was in jeopardy for excessive absenteeism but elected to leave work on March 31, 2012 before beginning his work shift. No contract of employment is more basic than the right of an employer to expect employees will appear for work on the day and hour agreed upon and repetitive failure

to honor that obligation shows a substantial disregard for the employer's interests and reasonable standards of behavior that an employer has a right to expect of its employees under the provision of the Iowa Employment Security Law. For these reasons unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated April 26, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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