

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KONG KANTHARONG**  
Claimant

**APPEAL NO: 06A-UI-08720-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 07/02/06 R: 01  
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated August 14, 2006, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on September 14, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Lena Hoang. Will Sager participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as a production worker from February 2001 to June 29, 2006. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they received 14 attendance points in a 12-month period. Points are given for unapproved absence and tardiness as follows (excused means properly reported): excused absence (one point) and unexcused absence (three points).

The claimant received a warning in February 2006 for excessive absenteeism after he was absent without proper notice on February 16 and 17. He was absent due to illness on June 19, 2006. On June 26 and 27, 2006, the claimant was absent because his children were sick. He was absent from work without proper notice to the employer on June 28. His children were still sick, but he did not call because he did not have a working phone.

The claimant worked on June 29, 2006, and was suspended on June 30, 2006, pending a review of his attendance record. He was discharged on July 3, 2006, because he had exceeded the 14-point limit for absenteeism.

## 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.

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).

871 IAC 24.32(7) provides:

(7) 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.

The claimant's unexcused absenteeism was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. He was repeatedly absent from work without proper notice to the employer. The fact that he did not have a working phone in his home does not provide an excuse for not calling in. Under the circumstances, he was required to find some

other way of notifying the employer, especially since he was warned before about missing work without proper notice. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated August 14, 2006, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/cs