

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMMIE WATTERS
Claimant

APPEAL NO. 09A-UI-08212-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

**Original Claim: 05-03-09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 5, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 23, 2009. The claimant participated in the hearing. Rick Wood, Human Resources Manager, and Jennifer Stubs, Human Resources Benefits Supervisor, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time laborer for Beef Products from December 9, 2008 to April 25, 2009. The employer's no-fault attendance policy allows employees to accumulate 14 attendance points within a rolling calendar year before termination occurs. The claimant signed for and received a copy of the attendance policy during orientation. The claimant was absent due to illness and received one point December 20, 2008; was tardy due to personal business needs and received one point December 26, 2008; was tardy and received one point December 29, 2009; was absent due to the weather and was the only employee not to report for work and received three points for an unexcused absence January 3, 2009; was absent due to illness and received one point January 12, January 25, February 12, February 17, February 18 and February 20, 2009; was tardy and received one point February 23, 2009; and was absent due to illness April 24, 2009, and his employment was terminated for exceeding the allowed number of attendance points. Human Resources Manager Rick Wood spoke to the claimant about his attendance informally on several occasions, often when the claimant asked about moving to first shift and Mr. Wood told him that his attendance was preventing such a move. The claimant received written warnings for excessive, unreliable attendance January 12, 2009; February 17, 2009; and February 22, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). All but four of the claimant's points were due to properly-reported illness. He also had three incidents of tardiness that he attributed to his ride being late and one incident of tardiness due to personal business. That said, however, because the final absence was related to properly-reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The June 5, 2009, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw