

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZELJKO ANDJELIC

Claimant

APPEAL NO. 07A-UI-04315-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

**OC: 08/06/06 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Zeljko Andjelic, appealed an unemployment insurance decision dated April 24, 2007, reference 06, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on May 15, 2007. The parties were properly notified about the hearing. Andjelic participated in the hearing with the assistance of an interpreter, Zijo Sucasca. Elaine Reader participated in the hearing on behalf of the employer. Exhibits A and B were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

Zeljko Andjelic worked full time as an hourly production worker for the employer from October 24, 2006, to February 15, 2007. Andjelic 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 would forfeit their employment after five days of absence without notice to the employer. Andjelic had been absent due to illness on several occasions in December 2006 and January 2007. He properly notified the employer regarding his absences.

Andjelic called in sick on January 31, February 1, and February 2. He had a doctor's note excusing him from working from February 5 through 9. On February 12, Andjelic called in and stated he would not be at work because his daughter was in the hospital. Andjelic worked on February 13, 14, and 15.

On February 16, Andjelic called and stated he was ill with fever and sore throat. He had a doctor's note excusing him from work from February 19 to March 4. Andjelic's wife had a baby on March 2. He called in on March 6 and informed the employer that his wife had a baby and he was staying home to take care of them. Andjelic continued to call in each day through March 16 stating that he was staying home with his wife and baby. On March 19, Andjelic called in due to his wife's medical condition. On March 20, Andjelic cut his thumb at home. He

went to the doctor, and his thumb was bandaged. He was excused from working for that week by his doctor.

Andjelic called in sick on March 26 and 28, 2007, because he had a problem with his neck and did not feel well. He was absent from work but did not call and notify the employer the week of April 2 through 6. On April 9, 2007, the employer terminated Andjelic due to job abandonment because he was absent for five workdays without notifying the employer. Andjelic stopped calling the employer because near the end of March, he called a supervisor at home asking about his employment status and the supervisor said he probably had been terminated due to his absences.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether Andjelic 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).

The reason why Andjelic's employment ended was because of his unreported absences on April 2 through 6, 2007. He did not have any legitimate excuse for his failure to contact the employer regarding these absences. It was unreasonable for Andjelic to call a supervisor at home to find out his employment status. Even based on what the supervisor said, it was Andjelic "probably" was terminated. Andjelic should not have relied on the supervisor's indefinite response and should have contacted the plant to find out for sure what had happened.

DECISION:

The unemployment insurance decision dated April 24, 2007, reference 06, 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs