

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN F RIOS RIVERA
Claimant

APPEAL NO. 13A-UI-11995-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 09/15/13
Claimant: Appellant (4-R)

Section 96.5-2-a – Discharge Requalification

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 16, 2013, reference 03, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on November 18, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Steve Widler participated in the hearing on behalf of the employer.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Has the claimant requalified since his separation from the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer for January 8, 2013, to April 8, 2013. 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 for excessive absenteeism.

The claimant had receive attendance points for picking his father up from the airport on February 15, being late due to a flat tire on March 11, failing to report to work as instructed on March 22, and leaving work after receiving an x-ray on April 1.

On April 4, the claimant called in and said he was going to be late. The claimant was arrested for driving without a valid driver's license and was absent that day. He had been living in Iowa for over a year but still was using his Puerto Rican driver's license. He knew that he needed to get an Iowa driver's license. He pled guilty to driving without a valid license.

The claimant was suspended when he reported to work on April 5 and discharged on April 8, 2013, for excessive absenteeism.

The claimant worked for West Liberty Foods after his employment with the employer ended. He was paid \$2,510.00 in wages before filing his claim effective September 15, 2013. His weekly benefit amount was determined to be \$212.00. West Liberty Foods did not protest the claim.

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 § 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).

The unemployment insurance rules provide: "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(7).

The evidence establishes that the claimant was discharged for excessive unexcused absenteeism. The final absence was due to a matter within the claimant's control.

The nature of an unemployment insurance disqualification is that a 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. The claimant has satisfied the ten times requalification and the disqualification should be lifted. This case is remanded to the Agency to lift the disqualification as soon as possible.

DECISION:

The unemployment insurance decision dated October 16, 2013, reference 03, is modified in favor of the claimant. The claimant was discharged for misconduct, but he has requalified. This case is remanded to the Agency to lift the disqualification as soon as possible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css