

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANNY D BLACK
Claimant

APPEAL NO. 09A-UI-03092-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE FOODS GROUP LLC
Employer

OC: 01/25/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 19, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 25, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Wilda Lampe participated in the hearing on behalf of the employer. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a production technician for the employer from September 17, 2008, to January 15, 2009. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer before the start of a shift if they were not able to work as scheduled.

The claimant was absent without notifying the employer on December 15, 2008, after he returned late from a trip to Chicago. As a result of this absence, he had reached four points under the employer's absenteeism policy, which for a probationary employee exceeded the limit. On December 16, the claimant met with management and was informed that his probation was being extended, but he was subject to discharge if he had any further absences.

The claimant was absent from work without notifying the employer on January 16, 2009, due to a problem with his back. He did not call in because he was at his sister's house, and his sister did not have a phone. He called in sick the next day.

When he reported to work on January 19, 2009, he was given the opportunity to explain his absence and why he didn't call in. He provided no explanation. He was discharged for violating his probation due to his unreported absence.

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 section 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).

871 IAC 24.32(7) states 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 was absent without notice on December 15 and January 16. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated February 19, 2009, reference 01, 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