

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY V JERREL
Claimant

APPEAL NO. 09A-UI-07480-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACH FOOD CO INC
Employer

OC: 04/19/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

ACH Food Company, Inc. filed a timely appeal from an unemployment insurance decision dated May 13, 2009, reference 01, that allowed benefits to Jerry V. Jerrel. After due notice was issued, a telephone hearing was held June 5, 2009, with Mr. Jerrel participating. Human Resources and Security Manager William Nelson participated for the employer.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jerry V. Jerrel was employed by ACH Food Company, Inc., from February 5, 1996, until he was suspended on April 9 and discharged on April 15, 2009, for violating the employer's attendance policy. The final incident leading to the discharge occurred on April 6, 2009. Mr. Jerrel was absent because he had injured his back while working in the warehouse. He notified the employer of his impending absence in accordance with its policy.

Mr. Jerrel received prior warnings and suspensions because of his attendance.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is not whether the employer was justified in discharging Mr. Jerrel. The question here is whether the discharge is for misconduct in connection with the individual's employment. For the reasons which follow, the administrative law judge concludes that the discharge was not due to misconduct.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(7). Although excessive unexcused absenteeism is misconduct, absence due to medical conditions are not held against an individual for unemployment insurance purposes provided the individual properly reports the absence to the employer. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). "The final incident leading to Mr. Jerrel's discharge was his absence on April 6, 2009. The evidence in this record establishes that the absence was due to a medical condition and that it was properly reported to the employer. Since it was not an act of misconduct, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated May 13, 2009, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

srs/pjs