

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK T PURTLE
Claimant

APPEAL NO. 09A-UI-06644-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSCEOLA FOODS CORPORATION
Employer

OC: 04/05/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Patrick Purtle filed an appeal from a representative's decision dated April 22, 2009, reference 01, which denied benefits based on his separation from Osceola Foods Corporation. After due notice was issued, a hearing was held by telephone on June 10, 2009. Mr. Purtle participated personally. The employer participated by Aaron Peterson, Human Resources Manager.

ISSUE:

At issue in this matter is whether Mr. Purtle was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Purtle was employed by Osceola Foods Corporation from September 25, 2006 until April 3, 2009 as a full-time production worker. He was discharged because of his attendance. His last day at work was March 19, 2009. He was granted vacation time off for March 23 and March 24.

Mr. Purtle properly reported the intent to be absent on March 25, 26, 30, and 31 and April 1 and 2. All six absences were due to lack of transportation as he was having car trouble. As a result of these final absences, he was discharged on April 3, 2009. He had been suspended from work as a result of his attendance in June of 2008. He was again warned about attendance in January and February of 2009. The last warning before discharge was on March 4, 2009. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is

disqualified from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

Mr. Purtle had received numerous warnings about his attendance. He was clearly on notice that his attendance was jeopardizing his continued employment with Osceola Foods Corporation. In spite of the warnings, he accumulated six consecutive absences in March of 2009. Absences caused by matters of purely personal responsibility, such as transportation, are not excused absences. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Therefore, the six absences beginning March 25, 2009 are all unexcused. Six consecutive unexcused absences is sufficient to establish excessive unexcused absenteeism, especially in light of the numerous prior disciplinary actions Mr. Purtle received regarding his attendance.

Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. It is, therefore, misconduct within the meaning of the law. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated April 22, 2009, reference 01, is hereby affirmed. Mr. Purtle was discharged for misconduct in connection with his employment. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs