

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANTISUK MOUA

Claimant

APPEAL NO. 14A-UI-03335-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 02/23/14

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 25, 2014, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on May 7, 2014. The claimant did participate and was assisted by interpreter Doua Lor. The employer did not participate.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a production worker beginning in 2009 through February 21, 2014 when he was discharged. The claimant was told he was being discharged for missing too much work or accumulating too many attendance points. The claimant had not received any warnings that his attendance was placing his job in jeopardy. He had been missing work to care for his young children after his wife left the family.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. 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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. The claimant had no warnings that his attendance was placing his job in jeopardy. Under these circumstances the employer had not met their burden to prove excessive unexcused absenteeism. Benefits are allowed.

DECISION:

The March 25, 2014, (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css