

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTOINE L JOHNSON
Claimant

APPEAL NO. 10A-UI-01496-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 01/03/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Antoine Johnson filed an appeal from a representative's decision dated January 22, 2010, reference 01, which denied benefits based on his separation from Cargill Meat Solutions Corporation (Cargill). After due notice was issued, a hearing was held by telephone on March 15, 2010. Mr. Johnson participated personally and was represented by Victoria Siegel, Attorney at Law. The employer participated by Jessica Sheppard, Human Resources Associate. Exhibits One through Nine were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Johnson 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. Johnson was employed by Cargill from September 5, 2007 until December 16, 2009. He was employed full time as a production worker. He was discharged because of his attendance. An individual is subject to discharge when he accumulates ten attendance points within any 12-month period.

Mr. Johnson was late reporting to work on 23 occasions from January 11 through December 10, 2009. He received attendance points for only 16 of the occasions. He also received points when he failed to punch in on the time clock on four occasions. His only absence of a full day was on October 10, 2009 when he missed work due to illness. On October 12, Mr. Johnson received two warnings. The "oral written" warning advised that he had 5.25 points as of October 7. The other, a first written warning, advised that he was at 8.25 points as of October 12. He received his second written warning on November 19 when he was at 9.25 points. Mr. Johnson signed all three of the above warnings.

The decision to discharge Mr. Johnson was triggered by the fact that he was late on December 10. His next most recent infraction was on November 9 when he was late. Attendance was the sole reason for the separation.

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. Tardiness in reporting to work is considered a limited absence from work.

Mr. Johnson was late to work an average of two times each month. The fact that the tardiness may have been by only one or two minutes is irrelevant. The employer had the right to expect him to be at work on time. The evidence of record did not establish any justification for the repeated tardiness. If he found traffic to be a problem, he could have adjusted his drive time. He contended that some of the tardiness was caused by the employer moving the time clock without notice. However, he continued to be late after the last time the time clock was moved in July of 2009 and he knew where it was located.

The administrative law judge does not doubt that there was inclement weather on December 10. Mr. Johnson's shift was at 3:00 p.m. Therefore, it would be reasonable to expect him to monitor the weather throughout the day and to leave home in sufficient time to account for any weather-related delays. He had to have known from the warnings he received that his continued employment was in jeopardy because of his repeated tardiness. Because he did not take those steps necessary to ensure his timely arrival on December 10, the tardiness is unexcused.

The attendance record identified herein is sufficient to establish excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. It is, therefore, misconduct within the meaning of the law. Accordingly, benefits are denied.

DECISION:

The representative's decision dated January 22, 2009, reference 01, is hereby affirmed. Mr. Johnson was discharged by Cargill for misconduct in connection with his employment. Benefits are denied 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/css