

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JEFFREY I BOYCE
APT 8
1233 – 3RD AVE SE
CEDAR RAPIDS IA 52403-4056

TYSON FRESH MEATS INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06O-UI-03740-DWT
OC: 01/01/06 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Jeffrey I. Boyce (claimant) appealed a representative's February 6, 2006 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the employer's account was not subject to charge because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2006. The claimant participated in the hearing. Jerome Rinken appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 19, 2005. The claimant worked as a full-time hourly employee. The claimant received information that employees would be discharged for excessive absenteeism if they accumulated 14 or more attendance points in a rolling calendar year.

During the claimant's employment, he received one point on July 5, August 11, September 9, 13, 25, October 14, November 4 and 7. Five of these attendance points occurred when the claimant properly notified the employer he was ill and unable to work as scheduled. On October 29, the employer gave the claimant three attendance points because the claimant did not call the employer or report to work as scheduled.

On November 15, the employer talked to the claimant because he had accumulated 11 attendance points. The claimant understood his job was in jeopardy. On November 25 and 26, the claimant was ill and unable to work as scheduled. The claimant worked the 6:30 a.m. to 3:30 p.m. shift. The claimant overslept on November 25 because he was ill and unable to work. The claimant did not contact the employer or report to work on November 25. The next day, November 26, 2006, the claimant was still ill and unable to work. The claimant again overslept, but called the employer when he woke up. The employer assessed the claimant three points each day because he had not called or properly called the employer or reported to work.

On November 28, the claimant had a doctor's excuse he had obtained on December 26, 2005. The employer, however, discharged the claimant for excessive absenteeism in accordance with the employer's policy. As of November 28, 2006, the claimant had 17 attendance points.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or

other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

As of November 15, 2005, the claimant understood his job was in jeopardy because he had accumulated 11 attendance points. About half of these points occurred when the claimant properly notified the employer he was ill and unable to work as scheduled. The facts show that with the exception of October 29 the claimant properly notified the employer when he was ill and unable to work as scheduled.

The claimant acknowledged he did not call the employer on November 25 and he called too late on November 26, 2005. Since the claimant knew his job was in jeopardy because of attendance problems, the claimant's failure to properly report his absences for two days amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for work-connected misconduct. As of January 1, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 6, 2006 decision (reference 02) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 1, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/pjs