

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

RAYMOND M CARDONA
1816 LOGAN ST APT J1
MUSCATINE IA 52761

TYSON FRESH MEATS INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-01250-AT
OC: 11/30/03 R: 04
Claimant: Appellant (2)

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:

Raymond M. Cardona filed a timely appeal from an unemployment insurance decision dated January 28, 2004, reference 02, which disqualified him for benefits. Upon a finding that he had voluntarily left employment with Tyson Fresh Meats, Inc. without good cause attributable to the employer. After due notice was issued, a telephone hearing was held on February 23, 2004 with community liaison Eva Garcia participating for the employer. Mr. Cardona was not available when called at the time of the hearing. He did not contact the Appeals Section until after the hearing had ended.

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: Raymond M. Cardona was employed in maintenance by Tyson Fresh Meats, Inc. from March 3, 2003 until he was discharged August 25, 2003. The final incident that led to his discharge was his absence without contact on August 21, 2003. He was absent due to a lack of transportation on May 20, 2003. All other absences were for medical reasons properly reported to the employer. Mr. Cardona had received warnings during the course of his employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that Mr. Cardona was discharged for misconduct in connection with his work. It does not.

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Excessive unexcused absenteeism is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to illness properly reported to the

employer, however, is not considered an excused absence. See 871 IAC 24.32(7). The evidence in this record establishes two unexcused absences with all other absences leading to the discharge being properly reported medical absences. Under these circumstances, the administrative law judge concludes that excessive unexcused absenteeism has not been established. In reaching this conclusion, the administrative law judge does not consider an absence on August 24, 2003 because the employer's witness testified that the decision to discharge had been made after the absence on August 23, 2003. Since the August 24, 2003 decision did not play a part in the decision to discharge, the administrative law judge cannot consider it in determining whether the evidence establishes misconduct.

DECISION:

The unemployment insurance decision dated January 28, 2004, reference 02, is reversed. The claimant was discharged under circumstances not constituting job related misconduct. He is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

kjf/kjf