

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN L DAVIS

Claimant

APPEAL NO. 12A-UI-01141-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC

Employer

OC: 12/25/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated January 30, 2012, reference 02, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on February 27, 2012. The claimant participated. The employer participated by Ms. McKenzie Harris, human resource coordinator. Employer's Exhibits 1 through 4 were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: John Davis was employed by Beef Products, Inc. from March 31, 2009, until December 6, 2011, when he was discharged from employment. Mr. Davis worked as a full-time laborer on the company's "A" shift and was paid by the hour.

The claimant was separated from employment after he failed to report or provide notification of his impending absences on three consecutive workdays, in violation of company policy.

Mr. Davis had been called away from work due to a death in his wife's family on November 21, 2011. The claimant was authorized by the company to leave work that day. The following day, Mr. Davis accumulated one attendance point when he was absent related to the bereavement. Mr. Davis then returned to work. The claimant asked for and received authorization to be off work for the funeral on November 29 and properly notified the employer of his absence on November 30, and December 1, 2011. Although the claimant was scheduled to work on Friday, December 2; Monday, December 5; and Tuesday, December 6, the claimant did not report or provide any notification to the employer, in violation of company policy. After the claimant had failed to report or provide notification for three consecutive workdays, he was considered by the company to have voluntarily left his employment.

It is Mr. Davis's position that he had been told that he was discharged after taking a portion of November 21 off and November 22 off when he was notified of a death in his wife's family.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In this matter, the claimant was separated from his employment after he failed to report for work or provide notification on December 2, 5, and 6, 2011. The claimant had earlier been given time away from work with authorization of the company after his wife's relative had passed away. The evidence in the record indicates that Mr. Davis had returned to work after that date and subsequently had been given additional time off for the funeral but that the claimant failed to

return as expected and did not provide any notification on Friday, December 2; Monday, December 5; and Tuesday, December 6, 2011.

Although the administrative law judge is aware that Mr. Davis maintains that he was discharged by the employer at an earlier date, the evidence in the record establishes the claimant had returned to work after taking initial time off at the time of the death in the family and subsequently had been authorized to be off work. The claimant had not requested to be off work on December 2, 5, or 6. Employer's Exhibit 1, a record kept in the ordinary course of business, reflects the days the claimant was present, off work with authorization, and the days he did not report or provide notification.

The administrative law judge concludes, based upon the totality of the evidence in the record, that the employer has sustained its burden of proof in showing that the claimant's job separation took place based upon the claimant's failure to report or provide notification for three consecutive workdays, in violation of a known company policy. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated January 30, 2012, reference 02, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw