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

LAWRENCE A EVANS
Claimant

APPEAL NO: 07A-UI-02629-DWT

ADMINISTRATIVE LAW JUDGE
DECISION

TYSON FRESH MEATS INC
Employer

OC: 02/11/07   R: 03
Claimant: Appellant   (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Lawrence A. Evans (claimant) appealed a representative's March 6, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged 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 2, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Jerome Rinken, a production manager, appeared on the employer's behalf.

After the hearing had been closed and the employer had been excused, the claimant called the Appeals Section and made a request to reopen the hearing. Based on the claimant's request to reopen the hearing, 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.

ISSUES:

Is there good cause to reopen the hearing?

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

FINDINGS OF FACT:

The claimant started working for the employer on April 12, 2005. The claimant worked as a full-time production employee. The claimant received a copy of the employer's attendance policy. The attendance policy informs employees they can be discharged if they accumulate 14 attendance points in a rolling calendar year.

On June 14, 2006, the claimant received a letter informing him he had accumulated 12 attendance points. If after receiving a 12-point letter, an employee's attendance points do not go below 12, the employee does not receive another letter indicating he has accumulated 12 or more points.

On January 4, 2007, the claimant notified the employer he was ill and unable to work. The claimant received one attendance point for this absence. On January 6, 2007, the claimant reported to work late and received one attendance point. On January 29, 2007, the claimant notified the employer he was ill and unable to work. The employer gave the claimant one attendance point for this absence. On February 7, 2007, the claimant left work early because he was ill and received one attendance point. On February 9, 2007, the claimant reported 15 minutes late for work. The claimant indicated he had been running late that morning. After the employer assessed the claimant one point for reporting to work late on February 9, the claimant had accumulated 15.5 points. The employer discharged the claimant on February 13, 2007 because he violated the employer's attendance policy for accumulating more than 14 points in a rolling calendar year.

The claimant contacted the Appeals Section on April 2 at 1:25 p.m. for a scheduled noon hearing. Although the claimant had received the notice of hearing about two weeks earlier, he could not find the hearing notice later. When the claimant discovered he could not find the hearing notice, he attempted to call his local Workforce office but was unable to contact anyone at the office. Although the claimant was making job contacts, he did not go to his local Workforce office to find out what he needed to do to participate in the hearing. The first time the claimant talked to a representative at his local office was April 2, 2007. By the time he talked to a local representative, the hearing had already been closed. The claimant obtained the Appeals Section phone number, contacted the administrative law judge and made a request to reopen the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and c.

Since the claimant received the hearing notice about two weeks prior to the scheduled hearing and knew for a while he had lost or misplaced the hearing notice, the claimant's failure to find out what if anything he had to do before the scheduled April 2 hearing does not establish good cause to reopen the hearing. The claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 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).

The employer established business reasons for discharging the claimant after he accumulated more than 14 attendance points in a rolling calendar year. A majority of the claimant's most recent absences occurred because the claimant was ill and unable to work as scheduled. The facts do not establish that the claimant knew his job was in jeopardy for attendance issues. Even though the claimant was 15 minutes late for work on February 9, the facts do not establish that he intentionally failed to work as scheduled in January or February 2007. With the exception of February 9 and January 6, 2007, when the claimant was late for work, the claimant was ill and unable to work. Under the facts of this case, the claimant did not commit work-connected misconduct. As of February 11, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 6, 2007 decision (reference 01) is reversed. The employer discharged the claimant for business reasons, but claimant did not commit work-connected misconduct. As of February 11, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs