IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

MICHAEL W WEDGWOOD
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO: 20A-UI-01791-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/02/20
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 24, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 16, 2020. The claimant participated in the hearing with his brother, former employee Jon Wedgwood. Kathryn Schoepske, Human Resources Administrator, participated in the hearing on behalf of the employer. Claimant's Exhibits A, B and C were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time forklift operator for Tyson Fresh Meats from December 18, 2017 to February 4, 2020. He was discharged for exceeding the allowed number of attendance points.

The employer uses a no-fault, point-based attendance policy that runs over a rolling calendar year. Employees receive one point for a full day absence; one-half point for an incident of tardiness; and three points for a no-call/no-show absence. The employer issues a written warning when an employee reaches three points; a written warning at six points; and termination occurs at 10 points.

The claimant was absent due to illness March 6, 2019, and received one point; he was tardy April 12, 2019, and received one-half point; he was absent due to illness July 16, 2019, and received one point; he was tardy August 2, 2019, and received one-half point; he was absent due to illness August 13, 2019, and received one point; he was absent due to personal business October 17 and 18, 2019, and received one point for each absence; he was tardy November 21, 2019, and received one-half point; he was considered a no-call/no-show December 2, 2019, and received three points; and was tardy January 29, 2020, and received one-half point for a total of ten points and his employment was terminated February 4, 2020.

The employer issued the claimant a written warning August 2, 2019, for accumulating three attendance points and a second written warning October 18, 2019, for accumulating six attendance points.

The claimant believed the employer was also required to warn employees when they reached nine attendance points and that when his brother was terminated for attendance he won his grievance because the employer failed to warn him at nine points.

The employer's schedule required the claimant to work from 6:00 p.m. to 6:00 a.m. or 6:00 a.m. to 6:00 p.m. and it changed every two months. The employer is required to notify employees of the changeover date two weeks prior to the date it was to occur. The claimant stated that the employer usually notified employees one week prior to the switchover date but failed to notify him before the first day of the switchover December 2, 2019, which resulted in him receiving three points for a no-call/no-show absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *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 substantial and 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).

The employer denies that employees are to be warned upon accumulating nine points and the claimant did not provide any written policy or part of the union contract that states that is the case. He did, however, offer evidence, and the employer agreed, that the employer must notify employees two weeks in advance of changes in their shifts. The claimant was not informed of the switchover prior to the December 2, 2019, change and consequently received a no-call no-show absence that resulted in three attendance points he should not have been assessed. Without those three points the claimant would not have reached 10 points and would not have been discharged February 4, 2020.

Under these circumstances, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The February 24, 2020, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/scn