

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JALEN E GARY
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 18A-UI-04716-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/04/18
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 9, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 9, 2018. Claimant participated. Employer participated through Mehdina Kurtovic, human resources associate. Claimant's Exhibit A was admitted into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct sufficient to disqualify him from receipt of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production worker loading and unloading trucks from July 3, 2017 through January 10, 2018, when he was discharged. The claimant was discharged for poor attendance. Under the employer's attendance policy, a copy of which was given to the claimant, once an employee reaches ten points they are discharged. The claimant last missed work on January 9 when he called in sick to work. That absence put him above ten points and he was discharged. The claimant properly reported his absence that day by calling in at least thirty minutes prior to the start of his shift.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because the final absence for which he was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The April 9, 2018, (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs