

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN D SLAUGHTER

Claimant

APPEAL NO. 13A-UI-02881-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY LLC

Employer

OC: 02/03/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated March 5, 2013, reference 01, that held he was discharged for excessive unexcused absenteeism and tardiness on February 7, 2013, and benefits are denied. A hearing was held on April 8, 2013. The claimant did not participate. Diane Guerrero, HR Manager, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant worked as full-time production from March 26, 2012 to February 5, 2013. The claimant received the employer attendance policy that provides for a three-step discipline.

The employer warned claimant with a second-step suspension on January 27, 2013 for attendance issues. He was put on 90-day probation with a warning that a further attendance issue within that period without excuse could lead to employment termination.

The claimant failed to report and/or timely call in an absence on February 6. He was discharged on February 7 for this incident as the third-step discipline in light of the prior warning.

Claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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(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 administrative law judge concludes employer established misconduct in the discharge of the claimant on February 7, 2013, for excessive "unexcused" absenteeism.

The employer had properly warned claimant about attendance policy violations with a second-step suspension on January 27. His third-step violation on February 5 constitutes job disqualifying misconduct in light of the prior discipline.

DECISION:

The decision of the representative dated March 5, 2013, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on February 7, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css