

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES C SANDERS
Claimant

APPEAL NO: 11A-UI-10577-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

**OC: 07/03/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

West Liberty Foods, L.L.C. (employer) appealed a representative's August 5, 2011 decision (reference 01) that concluded James C. Sanders (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 2, 2011. The claimant participated in the hearing. Alejandra Rojas appeared on the employer's behalf. Based on 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.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 23, 2010. He worked full time as a decaser/slicer in the employer's Mount Pleasant, Iowa turkey packing business on a 4:00 p.m. to 12:30 a.m. shift. His last day of work was the shift that began at 4:00 p.m. on March 3, 2011. The employer discharged him on March 4 and confirmed that discharge to him on March 7, 2011. The reason asserted for the discharge was excessive absenteeism.

The employer has a ten-point attendance policy. Prior to March 4 the claimant had reached nine points; he had been given a third-step written warning for attendance on January 28, 2011. His prior points included three points for absences due to illness, and six points for absences due to personal business.

On March 3 the claimant felt ill when he reported for work and later went to the company nurse. The nurse found the claimant had a temperature and told him he needed to leave. He left and went home at about 6:30 p.m. The next morning he went to a doctor who diagnosed him with influenza and told him he should stay off work for at least 24 hours. The claimant called in by about 12:30 p.m. to advise the employer that he was sick and would not be at his shift that afternoon.

At about 5:00 p.m. the claimant spoke with his immediate supervisor to inquire if he was scheduled to come in for overtime the next day, Saturday, if he was sufficiently recovered, and the supervisor indicated he could come in. Later that evening the claimant received call from his immediate supervisor indicating that a higher superintendent had determined that the claimant was discharged because of his attendance. On Monday, March 7 the claimant called the employer's human resources manager, and she confirmed that the claimant was discharged due to the additional absence.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); Cosper, supra; Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007). Because the final absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. The employer has failed to meet its burden to establish misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's August 5, 2011 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs