

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM D WATSON
Claimant

APPEAL NO. 12R-UI-04653-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 04/24/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 26, 2012, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on June 19, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Brian Ulin. No one participated in the hearing on behalf of the employer. The hearing had been postponed at the employer's written request to accommodate the employer's witnesses, but no one called to provide the names and phone numbers of those participating for the employer. I called the employer using information provided when the case was originally heard on June 30, 2011, but no one was available to participate at that time. No one called in afterward to participate in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a production worker for the employer from August 8, 2005, to April 28, 2011. His work shift started at 5 a.m. The claimant had missed work several times due to a family medical emergency but had properly notified the employer when he missed work. He had received discipline under the employer's attendance point policy.

The claimant was sick with strep throat on April 26. He had been to the doctor's office and was given an excuse to be off work. He called in a short time after the start of his shift because he was sick and taking medication that made him drowsy.

He returned to work with doctor's excuse on April 27 and worked his shift. When he reported to work on April 28, the employer discharged him for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide that 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. 871 IAC 24.32(7). The evidence establishes the claimant's absences were for legitimate reasons. While the claimant did not call in before the start of the shift on April 26, it was not due to willful misconduct.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

DECISION:

The unemployment insurance decision dated May 26, 2012, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw