

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELO A MAJOK
Claimant

APPEAL NO. 10A-UI-05929-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/21/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 15, 2010, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on June 11, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Robert Talang. Mike Lefevre participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from August 13, 2003, to March 23, 2010. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer 30 minutes before the start of their shift if they were not able to work as scheduled and were subject to termination if they received 14 attendance points in a 12-month period. Points are given for unapproved absence and tardiness as follows (excused means properly reported): excused absence (1 point), unexcused absence (3 points), and excused tardy of less than 2 hours (½ point). The claimant had been counseled about his excessive absenteeism several times, with the last time being on November 2, 2009. He was absent six times due to illness after November 2, with proper notice to the employer.

The claimant was scheduled to work at 7:00 a.m. on March 22, 2010. He was absent due to illness but did not properly notify the employer about his absence because his phone had been disconnected because he could not afford the bill and he could not call in on time using a neighbor's phone because he could not get a neighbor to answer his door right away.

The employer discharged the claimant after his absence on March 22, 2010, because his unexcused absence caused him to exceed the 14-point limit for absenteeism under the employer's attendance policy.

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 section 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 claimant's excessive unexcused absenteeism was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. He had a history of excessive absenteeism. And the final absence was without proper notice to the employer. He knew he was required to notify the employer 30 minutes before the start of his shift if he missed work. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated April 15, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs