

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOC NGUYEN
Claimant

APPEAL NO. 07A-UI-08005-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS
Employer

**OC: 07/15/07 R: 04
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Loc Nguyen filed an appeal from a representative's decision dated August 13, 2007, reference 02, which denied benefits based on his separation from West Liberty Foods. Due notice was issued scheduling a telephone hearing on September 5, 2007. Neither party responded to the notice of hearing. The decision herein is based on information provided to Workforce Development during the fact-finding interview held on August 10, 2007.

ISSUE:

At issue in this matter is whether Mr. Nguyen was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Nguyen was employed by West Liberty Foods from December 18, 2006 until July 12, 2007 as a full-time production worker. He was discharged because of his attendance. The final absences that prompted the discharge occurred on July 9, 10, and 11. Mr. Nguyen called on all three dates to report that he would be absent due to illness. At the time of discharge, he notified the employer that he was severely sunburned on July 8 and unable to work as a result.

Mr. Nguyen had received warnings regarding his attendance. The last warning prior to his discharge was on June 6, 2007. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. The administrative law judge is not bound by an employer's designation of an absence as "unexcused."

It was the employer's burden to establish that Mr. Nguyen was excessively absent on an unexcused basis. The fact that he had been warned about his attendance does not establish that the absences on which the warnings were based were unexcused absences. The final absences that triggered the discharge were due to the fact that Mr. Nguyen was too sunburned to work. A severe sunburn could conceivably impair an individual's ability to work, especially if he was in a production job that required repetitive movements. Mr. Nguyen did not participate in the hearing to explain the nature and extent of his sunburn. However, there is no evidence in the record to suggest that he could have worked in spite of the sunburn. Any doubt concerning his ability to work on July 9, 10, and 11 will be resolved in his favor.

The evidence as a whole failed to establish that Mr. Nguyen had an excessive number of unexcused absences during his employment with West Liberty Foods. The employer has not satisfied its burden of proving misconduct and, therefore, benefits are allowed.

DECISION:

The representative's decision dated August 13, 2007, reference 02, is hereby reversed. Mr. Nguyen was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css