

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY N REW
Claimant

APPEAL NO. 11A-UI-02866-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01/30/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 3, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on March 31, 2011. Claimant participated personally. The employer participated by Ms. Kris Travis, Employment Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Jeremy Rew was employed by Tyson Fresh Meats, Inc. from July 24, 2007 until January 29, 2011 when he was discharged for excessive unexcused absenteeism after being warned. Mr. Rew was employed as a full-time maintenance mechanic on the first shift and was paid by the hour.

The claimant was discharged on January 29, 2011 when he exceeded the permissible number of attendance point violations allowed under established company policy. Mr. Rew was aware of the policy and had been warned prior to being discharged.

The final event that caused the claimant's discharge is when Mr. Rew reported to work late on or about January 29, 2011. The claimant was on a warning at that time that further violations of the company's attendance policy could result in his termination from employment. Mr. Rew was late that day as he had overslept that morning because he had been up late the night before studying. The claimant had previously attempted to switch to the company's second shift in an effort to avoid oversleeping. The claimant's transfer was not approved because of seniority and business needs.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code § 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

The Supreme Court of the state of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The court held that the concept included tardiness, leaving early, etc. The Supreme Court in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) held that absence due to matters of "personal responsibility e.g. transportation problems and oversleeping" are considered unexcused.

Inasmuch as the claimant had received warnings from the employer and was aware that his employment was in jeopardy because of excessive absenteeism and/or tardiness and violated the company's attendance policy by reporting to work tardy on January 29, 2011, the administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant's discharge took place under disqualifying conditions. Benefits are withheld.

DECISION:

The representative's decision dated March 3, 2011, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, providing that he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs