

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAU N VU
Claimant

APPEAL NO. 09A-UI-17419-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

**Original Claim: 10/18/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 5, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 30, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with an interpreter, Kim Roberts. Jennifer Stubbs participated in the hearing on behalf of the employer with a witness, Rick Wood. Exhibits A and One were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a laborer from June 12, 2007, to June 25, 2009. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer at least 30 minutes before their shift if they were not able to work as scheduled and were subject to discharge for excessive absenteeism after receiving 14 attendance points. The claimant had been warned about absenteeism.

As of June 4, 2009, the claimant had 12 points, which were primarily due to absences due to his illness or a family member's illness.

The claimant was sick and unable to work on June 26. He called in 29 minutes before the start of his shift to report he was not able to work. The claimant went to the doctor and was excused from work until June 29. He turned in this excuse when he reported to work on June 29, but he was discharged for excessive absenteeism because he received three points under the policy because he called in one minute late.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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. No willful and substantial misconduct has been proven in this case. Calling in one minute late was not a deliberate or substantial violation and his reason for missing work was excused.

DECISION:

The unemployment insurance decision dated November 5, 2009, reference 01, is affirmed. 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