

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHUAIB A JAMA**

Claimant

**APPEAL NO: 14A-UI-05419-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGRI STAR MEAT & POULTRY LLC**

Employer

**OC: 05/04/14**

**Claimant: Appellant (5)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Shuaib A. Jama (claimant) appealed a representative's May 23, 2014 (reference 01) decision that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Agri Star Meat & Poultry, L.L.C. (employer). After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on June 16, 2014. The claimant participated in the hearing. Diane Guerrero appeared on the employer's behalf. Ibrahim Abukar served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant had two periods of employment with the employer during his current base period. He initially started working for the employer in June 2013. In that period of employment he worked full time on the second shift. His last day of work in that employment was November 19, 2013. The employer discharged him on that date. The reason asserted for the discharge was excessive absenteeism.

In his first period of employment he had 12 attendance occurrences, including eight tardies. He was given a final warning with a suspension on October 24, 2013. The final occurrence which led to the discharge on November 19 was another tardy on that date. The reason he was late that day was that he had gone to the power company to make a payment on his bill, as his power had been shut off the prior night due to non-payment. After this additional tardy after the final warning, the employer discharged the claimant.

The employer rehired the claimant on April 24, 2014. He then worked full time on the first shift. His last day of work in that second period of employment was May 6, 2014. He was discharged on May 7. The reason asserted for this discharge was time theft by being away from his work station beyond the allowed break, something for which he had been warned on May 1.

The employer asserted that the claimant went to break at about 5:15 p.m. and was not at his work station the rest of the shift, but clocked out at 6:05 p.m. The employer provided second-hand information that the claimant's supervisor was looking for him but could not find him. However, the claimant did not go to break at 5:15 p.m. and he was not away from his work station. Rather, he stayed at his work station until his coworker returned from prayers at about 5:45 p.m. He then went to take break and attend prayers, understanding that he would not need to return to his work station as his shift would be over by the time he was done with prayers, so he then clocked out and left at 6:05 p.m.

The claimant established an unemployment insurance benefit year effective May 4, 2014. His weekly benefit amount was calculated to be \$208.00. He did have some other employment between November 19, 2013 and May 4, 2014, but did not earn at least \$2,080.00 in that employment.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

In this case there are two base period separations which must be determined, the discharge on November 19, 2013 and the discharge on May 7, 2014. Since the claimant did not earn requalifying wages since the November 19 separation, either separation could serve to disqualify him from being eligible to receive unemployment insurance benefits.

First, the more recent separation on May 7, 2014 was due to asserted time theft by being away from his work station for an excessive break. The employer relies exclusively on the at least second-hand account from the supervisor that the claimant had been away from his work station from 5:15 p.m. until he clocked out at 6:06 p.m. However, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the supervisor might have been mistaken, whether he actually observed the entire time, whether he is credible,

or whether the employer's witness might have misinterpreted or misunderstood aspects of the supervisor's report. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was in fact away from his work station since 5:15 p.m. as compared to 5:45 p.m., as testified to directly by the claimant. The employer has not met its burden to show that the May 7, 2014 discharge was for disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute and the claimant would not be disqualified from benefits as a result of this separation.

The November 19, 2013 separation was due to excessive absenteeism. Excessive unexcused absenteeism can constitute misconduct. Rule 871 IAC 24.32(7). Tardies are treated as absences for purposes of unemployment insurance law. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The claimant's final tardy on November 19 was not excused and was not due to illness or other unforeseeable grounds. The claimant had previously been warned that future occurrences could result in termination. *Higgins*, supra. The employer discharged the claimant on November 19, 2013 for reasons amounting to work-connected misconduct. Since the claimant has not yet requalified by earning ten times his weekly benefit amount in other employment since November 19, 2013, benefits are denied until or unless he does so, provided he is then otherwise eligible.

**DECISION:**

The representative's May 23, 2014 (reference 01) decision is modified with no effect on the parties. The employer discharged the claimant for disqualifying reasons. While the May 7, 2014 separation is not disqualifying, the claimant is disqualified from receiving unemployment insurance benefits as of November 19, 2013. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is then otherwise eligible. The employer's account is not subject to charge for benefits that might be paid on wage credits earned during the employment which ended November 19, 2013.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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