

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM R BADING
Claimant

SMITHFIELD FRESH MEATS CORP
Employer

APPEAL 20A-UI-15622-S1-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/16/20
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

William Bading (claimant) appealed a representative's November 19, 2020, decision (reference 03) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Smithfield Fresh Meats (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 26, 2021. The claimant participated personally through Sonia, Interpreter. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

The claimant offered and Exhibit A was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from April 23, 2019, to August 17, 2020, as a full-time machine operator. He received the employer's handbook when he was hired. The claimant properly reported his absences and his absences were due to medical appointments. The employer did not issue the claimant any warnings during his employment.

The claimant had a doctor's note excusing him from work from July 20, 2020, through July 31, 2020. He was ill the first week and his daughter was in the hospital after a car accident at the end of the period. The claimant properly reported his absence. He returned to work on August 1, 2020. On August 17, 2020, the employer terminated the claimant for excessive absenteeism.

The claimant filed for unemployment insurance benefits with an effective date of August 16, 2020. His weekly benefit amount was determined to be \$493.00. The claimant received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after August 16, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

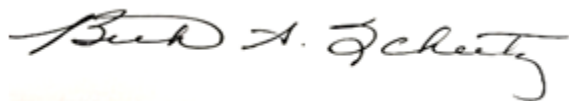
Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported medical issue. The claimant had a doctor's note excusing him from work from which occurred on July 20, 2020, through July 31, 2020. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's November 19, 2020, decision (reference 03) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge
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February 11, 2021
Decision Dated and Mailed

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