

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL LOFTON**  
Claimant

**APPEAL NO. 09A-UI-06711-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 04/05/09**  
**Claimant: Appellant (2)**

Section 95.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated April 28, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 27, 2009. Claimant participated. The employer did provide a name and telephone number but when this number was called by the administrative law judge, there was no answer. A message was left to call if the employer wished to participate in the hearing. At the time that the hearing was finished, there had been no call from the employer. The record consists of the testimony of Michael Lofton.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant started working for the employer on April 1, 2008. He worked on the ham line and did ham skinning and re-trim. On March 27, 2009, the claimant was picked up by the police for questioning in a case involving a friend of his who had a restraining order. The friend was in the claimant's car at the time and the police wanted to question the claimant on what he knew about the situation. The claimant was incarcerated and had to wait for a judge to be available in order to obtain his release. The claimant was scheduled to work on Friday evening and he had been incarcerated the prior day. The claimant was able to persuade jail personnel to allow him to place a call to the employer. The claimant said that he was sick and would not be in to work that evening.

After the claimant was released, he called his supervisor and asked him if he could go back to work. His supervisor agreed and the claimant worked on Saturday and Monday. On Tuesday, a co-employee left her machine and came to where the claimant and another employee were working. The claimant and this co-employee's daughter had had a prior relationship. The

co-employee got involved in an argument with the claimant and the other employee and she had to be removed by the supervisor. She then told management that the claimant had actually been in jail when he called in sick the previous Friday. As a result of this mis-representation about his whereabouts on Friday, the claimant was terminated.

The employer had an attendance policy that mandated termination after a certain number of points had been accumulated. The claimant still had 4 points available to him at the time of his termination. Had he been a no-call, no-show on Friday, he would have been given three points and kept his job.

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

Iowa Code section 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.

After carefully considering the evidence in this case it is concluded that the employer has failed to show misconduct that would disqualify the claimant from receiving unemployment benefits. The claimant did misrepresent to his employer the reason for his absence on Friday night by saying he was sick. He did, however, make the effort to call the employer and report his absence. The claimant would not have been terminated under the attendance policy if he had been a no-call, no-show as he would have only accumulated an additional three points. While the claimant may have used poor judgment when reporting the reason for his absence, his conduct does not constitute a willful or wanton disregard of the employer's interest. There was no wrongful intent or evil design. A single instance of reporting a false reason for being absent

will not disqualify the claimant for benefits given the totality of the circumstances in this case. Benefits will be awarded.

**DECISION:**

The decision of the representative dated April 28, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs