

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACK E JOHNSON
Claimant

APPEAL NO. 12A-UI-14369-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HORMEL FOODS CORPORATION
Employer

**OC: 11/04/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Hormel Foods Corporation filed a timely appeal from a representative's decision dated November 30, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 9, 2013. Claimant participated. The employer participated by Ms. Erin Montgomery, Controller.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Jack E. Johnson was employed by Hormel Foods Corporation from September 8, 2008 until November 5, 2012 when he was discharged for exceeding the permissible number of attendance infractions allowed under company policy. Mr. Johnson was employed as a full-time production worker and was paid by the hour. His immediate supervisor was Richard Bennett.

Mr. Johnson was discharged on November 5, 2012 when he was unable to supply sufficient documentation to cover his absences from October 8 through October 10, 2012 under the Family Medical Leave Act.

Under company policy employees are subject to discharge if they accumulate over five absences in a five-month period. Mr. Johnson had most recently been absent on October 8 through October 10, 2012 when he pinched a nerve in his neck and was unable to report to work for medical reasons. Mr. Johnson properly notified the employer of his impending absence each day and the reason for it. The claimant also supplied medical documentation supporting his need to be absent those days for medical reasons.

In an effort to avert the claimant's discharge, the claimant was given the opportunity to submit documentation making his most recent absences covered under the Family Medical Leave Act. The initial documentation submitted by the claimant in a timely manner was not accepted

because it was submitted by a chiropractor without the use of an x-ray examination. Because of confusion on the part of the claimant, he was unable to supply supplementary medical documentation within the 15-day time limit that he mistakenly believed began when he was absent in October 2012.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct that may be serious enough to warrant the discharge of an employee may not

necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The Supreme Court 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 job misconduct. The Court held that the absences must both be excessive and unexcused and the concept included tardiness, leaving early, etc. The Court further held, however, that absence due to illness and other excusable reasons are deemed excused if the employee properly notifies the employer.

Inasmuch as the evidence in the record establishes that the absences that caused the claimant's discharge were due to illness and were properly reported, the administrative law judge concludes that the claimant did not engage in intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated November 30, 2012, reference 01, is affirmed. Claimant separated from employment under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs