

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUDOLPH R FLORENCE
Claimant

APPEAL NO: 08A-UI-10511-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 10/05/08 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Rudolph R. Florence (claimant) appealed a representative's October 28, 2008 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 25, 2008. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 5, 2008. The claimant worked as a full-time employee making boxes. The claimant worked the second shift that started at 4:00 p.m.

The claimant understood the employer's policy indicated the employer would discharge an employee, if the employee accumulated 14 attendance points. The claimant also understood the employer assessed one point when an employee notified the employer he could not work as scheduled. The employer assessed three points when an employee did not call or report to work as scheduled, or when an employee called to report he would be late but did not report to work that shift.

As of September 18, the claimant understood he had accumulated 11.5 attendance points. On or about September 18, the claimant paid a driver to take him to Iowa City to the Veteran's Hospital. The claimant thought the driver would wait for him and take him back home so he

could report to work as scheduled. After the claimant discovered his driver had left, he called the employer between 1:00 and 2:00 p.m. to report he was unable to work that day. The claimant understood the employer would assess him one attendance point for not reporting to work that day.

On September 24, the claimant learned the employer assessed him three attendance points for the above absence. When the claimant asked why he had not been assessed one point, the employer understood the claimant had called to report he would be late and when he did not report to work, the employer assessed him three points instead of one point. The employer discharged the claimant on September 24 for violating the employer's attendance policy by accumulating more than 14 attendance points.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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The employer may have had business reasons for discharging the claimant. The facts presented during the hearing do not establish that the claimant intentionally violated the employer's attendance policy. Also, the claimant's most recent absence was beyond his control. On or about September 18, the claimant made arrangements for a driver to take him to Iowa City for a medical appointment and understood the driver would take him back to Columbus Junction in time to go to work as scheduled. When the claimant realized he would not be able to work as scheduled because his driver left, he properly notified the employer he would not be able to work that day. Since the employer did not participate in the hearing, the claimant's testimony is not disputed. The claimant did not commit work-connected misconduct.

DECISION:

The representative's October 28, 2008 decision (reference 01) is reversed. The employer discharged the claimant, but the evidence does not establish that that claimant committed work-connected misconduct. As of October 5, 2008, the claimant is qualified to receive benefits provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs