

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**SOMBAT SAYAPHAY  
1906 HICKMAN RD  
DES MOINES IA 50314**

**WARRENS FROZEN FOOD INC  
803 – 8<sup>TH</sup> ST SW  
ALTOONA IA 50009**

**Appeal Number: 05A-UI-01024-HT  
OC: 03/21/04 R: 02  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Sombat Sayaphay, filed an appeal from a decision dated January 21, 2005, reference 06. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 16, 2005. The claimant participated on his own behalf. The employer, Warrens Frozen Food, Inc. (Warrens), participated by Human Resources Manager Steve Bowers.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Sombat Sayaphay was employed by Warrens from

August 22 until December 30, 2004 as a full-time production worker. He had received a final written warning and one-day suspension on September 19, 2004 for absenteeism, and was told his job was in jeopardy if there were any further incidents. On October 17, 2004, he received a final written warning and three-day suspension for leaving the production line before all the work was completed.

On December 30, 2004, Mr. Sayaphay was scheduled to work at 1:00 p.m., although the shift usually started at 3:00 p.m. The schedule change had been posted for approximately one week and the supervisor had also notified the production crew at the morning meetings. The claimant did not appear for work until his usual time of 3:00 p.m. and was discharged by supervisor Tim Woods.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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, (7) provide:

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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(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 claimant had been advised his job was in jeopardy as a result of his poor attendance. In spite of the warning he was two hours late to work on December 30, 2004. This was because he apparently did not remember the supervisor telling the production crew of the change in the start time, nor did he read the posted schedule. It is his responsibility to be aware of his schedule and arrive at the proper time, especially when the changes had been posted and the supervisor had notified him and the rest of the crew in a meeting. This tardiness was unexcused and, in conjunction with the prior absences, is excessive. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of January 21, 2005, reference 06, is affirmed. Sombat Sayaphay is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/tjc