

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEREK T MANNING
Claimant

APPEAL NO. 08A-UI-08076-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 07/06/08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 8, 2008, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on September 24, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Jim Hook participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from October 1, 2007, to May 5, 2008. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they received 14 attendance points in a 12-month period. Points are given for unapproved absence and tardiness as follows (excused means properly reported): excused absence (one point), unexcused absence (three points), excused tardy of less than two hours (one-half point), excused tardy of two or more hours (one point), and unexcused tardy of less than two hours (one point), and unexcused tardy of two or more hours (two points). The claimant had received warnings regarding his excessive absenteeism in March 2008. At that point he had 14 points because due to repeatedly missing work due to illness and he had not called in his absences properly on March 13 and 14. The claimant's supervisor exercised his discretion in allowing the claimant to continue working.

The claimant called in sick on March 26, April 7, and April 21. He was late for work on April 23 and again called in sick on April 28 and 29. He was absent on May 2 and called after the required time. On May 5, 2008, the claimant was discharged for excessive absenteeism. On some of these days, the claimant called in sick but he really was not sick, he missed due to attending school.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides: "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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant was absent from work for other than legitimate reasons and he did not call in properly at time when he missed work, including his final absence on May 2.

When the procedure for the hearings were explained the claimant brought up the fact that he thought the employer's protest was late. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the employer mailed its appeal on July 14, 2008, the final day for protesting. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

DECISION:

The unemployment insurance decision dated September 8, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css