

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHETMANY VILAYHONG
Claimant

APPEAL NO. 08A-UI-05571-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA PACIFIC PROCESSORS INC
Employer

**OC: 05/11/08 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Iowa Pacific Processors, filed an appeal from a decision dated June 6, 2008, reference 01. The decision allowed benefits to the claimant, Phetmany Vilayhong. After due notice was issued, a hearing was held by telephone conference call on July 1, 2008. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Manager Dave Martin and Production Supervisor Jon Lemke.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Phetmany Vilayhong was employed by Iowa Pacific Processors from November 13, 2006 until April 29, 2008, as a full-time employee in the packaging department. He had received a copy of the employee handbook, but it does not set out a specific progressive disciplinary procedure regarding absenteeism. Warnings are given at the discretion of the supervisor.

Mr. Vilayhong received a verbal warning on April 3, 2008, from Production Supervisor Jon Lemke about his attendance. On April 29, 2008, the claimant came to work but spoke immediately with Human Resources Manager Dave Martin and said he was sick and wanted to go home. Mr. Martin said he could go home if he was sick but that if he did, it would put him “over the edge” on his attendance. Mr. Vilayhong said he was going home and Mr. Martin discharged him.

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.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The claimant was discharged for absenteeism. However, under the provisions of the above Administrative Code section, the discharge must be precipitated by a current, final act of misconduct. A properly reported illness cannot be considered misconduct as it is not volitional. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Mr. Vilayhong properly reported to the human resources manager he was sick and wanted to go home. This is a properly reported illness and cannot be considered a final act of misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of June 6, 2008, reference 01, is affirmed. Phetmany Vilayhong is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw