

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLON Y DAVIS

Claimant

APPEAL NO. 14A-UI-03201-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 02/09/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. filed a timely appeal from a representative's decision dated March 12, 2014, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 16, 2014. Claimant participated. The employer participated by Ms. Kristi Fox, Human Resource Clerk.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Marlon Davis was employed by Tyson Fresh Meats, Inc. from March 18, 2013 until February 12, 2014 when he was discharged for exceeding the permissible number of attendance infraction points allowed under company policy. Mr. Davis was employed as a full-time production worker and was paid by the hour.

Mr. Davis was discharged on February 12, 2014 when he reported for work that day. Claimant was informed he was being discharged because he exceeded the permissible number of infractions under the company's "no fault attendance policy." Under the policy employees are subject to discharge if they exceed a set number of infractions within a rolling set period of time.

Prior to Mr. Davis' discharge, the claimant had been absent for approximately two weeks due to an eye infection. After being released by his physician to return to work, it was determined that the eye infection continued and Mr. Davis needed more time away from work. Mr. Davis provided a doctor's statement to the company verifying his need to be off work for an additional period of time, however, the employer does not recognize doctor's notes and additional days away from work were counted as infraction points. Mr. Davis properly notified the employer on each occasion of his impending absences.

It is the employer's position that company records indicate that Mr. Davis "quit" his employment with the company on February 12, 2014.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional 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. Misconduct 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).

Excessive absenteeism is not considered misconduct unless unexcused. Absences due to properly reported illness or injury do not constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purposes of the Iowa Employment Security Act. An employer's point system or no fault absenteeism policy is not dispositive of the issue of qualification for benefits.

The evidence in the record establishes that numerous absences by Mr. Davis were due to illness or injury and that Mr. Davis properly notified the employer of each impending absence. The administrative law judge thus concludes that the claimant did not have excessive, unexcused absences. While the decision to terminate Mr. Davis may have been a sound decision from a management viewpoint, the evidence in the record does not establish misconduct sufficient to warrant the denial of unemployment insurance benefits.

The administrative law judge concludes based upon the evidence in the record that the claimant was discharged and did not elect to voluntarily quit his employment with this employer.

DECISION:

The representative's decision dated March 12, 2014, reference 01, is affirmed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs