

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM A JOHNSON
Claimant

APPEAL NO: 07A-UI-00058-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON RETAIL DELI MEATS INC
Employer

**OC: 12/03/06 R: 01
Claimant: Respondent (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Tyson Retail Deli Meats, Inc. (employer) appealed a representative's December 21, 2006 decision (reference 01) that concluded William A. Johnson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 22, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Will Sager, the complex human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 May 30, 2006. The employer hired the claimant to work as a full-time production worker. The employer considers a new employee a probationary employee for 90 days. To satisfactorily complete the probation, an employee must not accumulate more than five attendance points in the first 90 days of employment.

The claimant accumulated a total of five attendance points when he called in sick on June 9, 21, 23, July 7 and August 15, 2006. The employer gave the claimant a written warning on June 30. This warning informed the claimant that he had already accumulated three attendance points.

On August 16, the claimant notified the employer that his car would not start so he would not be at work. The claimant worked second shift that started at 4:30 p.m. The claimant lived about six miles from work and could have taken a cab to work. There are also many employees who work in Cherokee who could have given the claimant a ride to work. The employer assessed the claimant three attendance points for his unexcused August 16 absence.

On August 18, the employer discharged the claimant because he did not satisfactorily complete his probation. At the time of the discharge the claimant had eight attendance points.

The claimant established a claim for unemployment insurance benefits during the week of December 3, 2006. If the claimant earned wages from another employer, these wages do not show up in the administrative record. The claimant has not filed any weekly claims.

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. 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).

The claimant knew or should have known his continued employment was in jeopardy after he called in sick on August 15, 2006. Even if the claimant's car would not start on August 16, the facts establish he could have reported to work by taking a cab or making arrangements to ride to work with a co-worker. Since the claimant did not participate in the hearing, a preponderance of the evidence indicates the claimant intentionally failed to work as scheduled on August 16. The claimant's failure to work amounts to a substantial disregard of the employer's interests. The employer established that the claimant committed a current act of work-connected misconduct. As of December 3, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's December 21, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 3, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs