

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSH N BELVILLE
Claimant

APPEAL NO. 09A-UI-03907-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VISTA BAKERY INC
Employer

OC: 06/29/08
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Final Act of Misconduct

STATEMENT OF THE CASE:

Josh N. Belville filed a timely appeal from an unemployment insurance decision dated March 4, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held March 31, 2009 with Mr. Belville participating. Human Resources Director Karen Taylor participated for the employer, Vista Bakery, Inc.

ISSUE:

Was the claimant discharged for a final, current act of misconduct?

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: Josh N. Belville was employed by Vista Bakery, Inc. from July 26, 2007 until he was discharged February 11, 2009. The final incident leading to his discharge were absences due to injury beginning January 30, 2009. The employer was aware of the reason for the claimant's absences.

REASONING AND CONCLUSIONS OF LAW:

The question here is not whether the employer was justified under its policy for discharging Mr. Belville. The sole issue for this administrative law judge is whether the reason for the discharge constitutes misconduct as that term is defined for unemployment insurance purposes. The administrative law judge concludes that disqualifying misconduct has not been established.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the discharge was a current act of misconduct. See 871 IAC 24.32(8). While excessive unexcused absenteeism is misconduct, absence due to medical conditions is not held against an employee for unemployment insurance purposes provided the employee properly reports the absences to the employer. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7).

Ms. Taylor testified that Mr. Belville's final absences were due to an injury and that the employer was aware that he needed to be absent. While discharge may have been justified under the employer's attendance point system, the administrative law judge concludes that the evidence fails to establish a current act of misconduct leading to that discharge. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated March 4, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs