

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ISHAG A MOHAMED
Claimant

APPEAL NO. 08A-UI-08241-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 07/27/08 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ishag Mohamed filed an appeal from a representative's decision dated September 12, 2008, reference 02, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on October 16, 2008. Mr. Mohamed participated personally. Magdy Salama participated as the interpreter. The employer responded to the notice of hearing but the designated witness was not available at the number provided at the scheduled time of the hearing.

ISSUE:

At issue in this matter is whether Mr. Mohamed was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Mohamed was employed by Tyson from January 10, 2005 until July 24, 2008 as a full-time production worker. He was discharged because of his attendance. An individual is subject to discharge if he accumulates too many attendance points.

Mr. Mohamed last performed services for Tyson on July 11, 2008. He was arrested on July 12 and confined to jail. He was next scheduled to work on July 14. He was not released from jail until July 23. He was not able to call the employer while in jail. He reported to the workplace on July 24 and was advised that he no longer had employment because he had too many attendance points. Mr. Mohamed had been warned about his attendance. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer did not participate in the hearing to provide details

concerning Mr. Mohamed's separation. Therefore, his testimony was unchallenged during the hearing. However, the administrative law judge cannot ignore the inconsistency between his testimony during the hearing and his statement during the fact-finding interview held on September 11, 2008.

Mr. Mohamed indicated in his fact-finding statement that he was absent from July 14 through July 23, 2008 because he was in jail. He also indicated that he was unable to contact the employer while he was in jail. During the hearing, he testified that he had not been in jail since 2005. He also testified that he only had 12 attendance points at the time of separation when it takes 14.5 for discharge. He also testified that his last attendance infraction was on June 27 when he was late because of car trouble. The employer's initial protest to Mr. Mohamed's claim indicated that he had abandoned his job when he failed to return to work.

The administrative law judge appreciates that Mr. Mohamed did not have an interpreter when he gave his statement during the fact-finding interview. Given the details noted in his statement, the administrative law judge is not inclined to believe the interviewer fabricated the facts. Moreover, his fact-finding statement is consistent with information provided by the employer prior to the interview. The employer's assertion that he abandoned his job when he failed to return to work is consistent with Mr. Mohamed's fact-finding statement that he was confined to jail and unable to call the employer from July 14 through July 23. For this reason, the administrative law judge does not believe the statement given by Mr. Mohamed was the product of a language barrier.

In making a credibility determination, the administrative law judge has also considered other facts recited by Mr. Mohamed during the hearing. It seems unlikely the employer would discharge him with only 12 attendance points if 14.5 were needed for discharge. It also seems unlikely that the employer would wait until July 24 to discharge him for a final infraction that occurred on June 27. For the above reasons, the administrative law judge gives no credence to Mr. Mohamed's testimony during the hearing. He was discharged when he returned to work after having been gone for eight days due to being in jail.

An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Mr. Mohamed had been warned about his attendance prior to July 14, 2008. His absences from July 14 through July 23 are unexcused as they were all due to incarceration, which is not a reasonable cause for missing work. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). They would also be unexcused because they were not properly reported to the employer. The administrative law judge considers eight consecutive unexcused absences after warning to be excessive.

Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. For the reasons cited herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated September 12, 2008, reference 02, is hereby affirmed as to result. Mr. Mohamed was discharged by Tyson for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs