

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENA D FARNSWORTH
Claimant

APPEAL NO. 10A-UI-15182-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON RETAIL DELI MEATS INC
Employer

OC: 08/15/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

Dena D. Farnsworth filed a timely appeal from an unemployment insurance decision dated October 28, 2010, reference 01, that disqualified her for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa January 7, 2011 with Ms. Farnsworth participating. Tyson Retail Deli Meats, Inc., the party requesting the in-person hearing, did not appear for that hearing.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

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: Dena D. Farnsworth was employed as a production worker by Tyson Retail Deli Meats, Inc. from February 8, 2010 until she was discharged August 20, 2010. The discharge was due to absences for a medical reason. Ms. Farnsworth contacted the employer daily concerning her absences. She received a discharge letter in the mail before she could return to work.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes the claimant was discharged for misconduct in connection with her employment. It does not.

Iowa Code § 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 § 96.6-2. As noted above, the employer did not participate in the contested case hearing. The claimant's testimony is not contradicted in the record of this case. While excessive unexcused absenteeism is misconduct, absence due to a medical condition properly reported to the employer cannot be held against an employee for unemployment insurance purposes. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). Furthermore, before disqualification may be imposed following a discharge, the evidence must show that the separation occurred because of a final, current act of misconduct. See 871 IAC 24.32(8). The evidence in this record establishes that the final absences leading directly to the discharge were for a medical reason and were properly reported. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated October 28, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs