

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA L GUZMAN CARCAMO
Claimant

APPEAL NO: 12A-UI-07578-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON RETAIL DELI MEATS INC
Employer

**OC: 08/14/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 19, 2012, reference 02, that held she was discharged for misconduct on May 30, 2012, and benefits are denied. A telephone hearing was scheduled and held on July 18, 2012. The claimant did not participate. The employer chose not to participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: The claimant worked for the employer as a full-time production employee from October 4, 2011 to May 30, 2012. When contacted for the hearing, HR Generalist Hillman advised that it was not contesting claimant's unemployment for benefits. Claimant states she was discharged for absences due to illness on May 30, 2012 and the employer knew about it.

REASONING AND CONCLUSIONS OF LAW:

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(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 administrative law judge concludes that the employer failed to establish claimant was discharged for misconduct on May 30, 2012. The claimant fact-finding statement is the employer discharged her for absences due to properly reported illness that is not misconduct. The employer declined to participate in this hearing stating it is not contesting claimant's unemployment.

DECISION:

The department decision dated June 19, 2012, reference 02, is reversed. The claimant was not discharged for misconduct on May 30, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs