

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTORIA SAMSON
Claimant

APPEAL NO. 12A-UI-06309-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/04/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Victoria Samson appealed an unemployment insurance decision dated April 3, 2012, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on May 31, 2012. The parties were properly notified about the hearing. Ms. Samson participated in the hearing. Dzamal Gercic participated in the hearing on behalf of the employer.

ISSUES:

Did Victoria Samson file a timely appeal?

Was she discharged for work-connected misconduct?

FINDINGS OF FACT:

Victoria Samson worked full-time for the employer as a production worker from September 28, 2009, to February 28, 2012. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after receiving ten attendance points in a 12-month period.

Ms. Samson was absent from work six times from March 2, 2011, to October 31, 2011. Starting in January 2012, she was absent from work because her normal babysitter was attending school full-time and she could not find another babysitter. Her children were eight and five years old. She had 21 absences because she did not have a babysitter to watch her children from January 23 through February 20, 2012. She called the employer to report her absences.

On February 27, 2012, Teri Wray in the human resources department called Ms. Samson and asked that she come to work. When she reported to work on February 28, 2012, she was informed that she was discharged due to excessive absenteeism because she had exceeded the points allowed under the attendance policy.

Ms. Samson filed a new claim for unemployment insurance benefits effective March 2, 2012. An unemployment insurance decision was mailed to Ms. Samson's last known address of record on April 3, 2012. The decision concluded she was discharged for misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by April 13, 2012.

Ms. Samson received the decision within the ten-day period for appealing the decision. She filed a written appeal on April 10, 2012, at the Workforce Development Center in Waterloo, Iowa. The representative told her that she would submit the appeal, but the Appeals Bureau never received the decision. She faxed the appeal again from the Workforce Center in Worthington, Minnesota, on May 7, 2012, after finding out the first appeal had not been received.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether Victoria Samson filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. The appeal in this case is deemed timely because Ms. Samson initially filed it with the Waterloo Workforce Development Center on time on April 10, 2012, but due to an Agency error it was not transmitted to the Appeals Bureau.

The next issue in this case is whether Ms. Samson was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules state that "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." 871 IAC 24.32(7). The case law indicates that absences due to lack of child care would not be considered reasonable grounds for absenteeism. *Higgins v. Iowa Dep't of Job Service*, 350 N.W.2d 187, 191 (Iowa 1984). Ms. Samson was therefore discharged for misconduct as defined by the law.

DECISION:

The unemployment insurance decision dated April 3, 2012, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw