

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANTRICE N REDD**

Claimant

**APPEAL NO. 13A-UI-12792-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 10/06/13**

**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated November 7, 2013, reference 02, that held the claimant was not discharged for excessive unexcused absenteeism on August 19, 2013 and benefits are allowed. A hearing was held on December 9, 2013. The claimant participated. Dzemaal Grcit, Benefits Counselor, participated for the employer.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant worked as a full-time production employee from November 5, 2012 to August 15, 2013. The claimant received the employer attendance policy that provides for a point system when an employee violates it. Ten points is the threshold for termination.

The employer provided claimant with attendance point notifications in January and March 2013. She was at six points on March 11. She lost her identification badge and was unable to clock in on August 13, 14 and 15. She notified her supervision about the problem and she was told it was being taken care of. Claimant worked eight hours on August 13 and August 14, but worked only six hours on August 15 due to leaving early. She called in sick for August 16.

The employer terminated claimant on August 19 for accumulating nineteen and one-half points. It awarded her nine points for being a no-call/no-show to work for three days on August 13, 14 and 15 and one point for being absent on August 16.

**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 misconduct in the discharge of the claimant on August 19, 2013, for excessive "unexcused" absenteeism.

Claimant offered credible testimony she worked August 13, 14 and 15 and clock-in was not recorded due to her missing badge. Claimant told her supervisors what happened. The employer witness was unable to refute claimant's testimony. She worked was not a no-call/no-show. A properly reported absence due to illness is not misconduct.

Job disqualifying misconduct is not established. The last period of absence accounts for ten points that is not misconduct and it is under the employer threshold for termination.

**DECISION:**

The decision of the representative dated November 7, 2013, reference 02, is affirmed. The claimant was not discharged for misconduct in connection with employment on August 19, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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