

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RHONDA L KELLAR
Claimant

APPEAL NO. 10A-UI-15891-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 10/10/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 12, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 4, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Jessica Shepard participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a production worker from January 31, 2008, to October 7, 2010. The claimant 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 discharge after having ten attendance occurrences.

The claimant was discharged on October 7, 2010, for violating the employer's attendance policy by accumulating 12 attendance points. The claimant was at 5 attendance points after she was late for work on September 24 and 25. She was absent from work on September 27 and 28 because her child was sick. She called the employer and said she would not be at work.

The claimant was ill and unable to work on September 29. She failed to call in because she did not have a phone available that day. On September 30, the employer gave the claimant an oral written warning for accumulating 5 points due to her tardiness on September 24 and 25. She did not receive discipline for her September 27, 28, and 29 absences.

The claimant was ill and unable to work on October 4 and 5. The claimant notified the employer about these absences and had a doctor's excuse covering these absences.

The employer discharged the claimant when she reported to work on October 7 for violating the attendance policy.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant 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).

871 IAC 24.32(7) provides:

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 preponderance of the evidence establishes, the claimant's final absences were for legitimate illness and were properly reported. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated November 12, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw