

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGUM A AWNGOAM
Claimant

APPEAL NO: 12A-UI-14863-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 11/18/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 18, 2012 determination (reference 02 that amended reference 01). Reference 02 disqualified the claimant from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Eloisa Baumgartner, the employment manager, appeared on the employer's behalf. Magdy Salama interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in April 2007. She worked full time. The employer's written attendance policy informs employees they can be discharged for excessive absenteeism. The employer's policy defines excessive absenteeism as accumulating 14 or more attendance points in a rolling calendar year. The employer assesses one point when an employee notifies the employer just before a scheduled shift that the employee is unable to work as scheduled. The employer assesses an employee three points when the employee does not call or report to work as scheduled.

On November 14, 2012, the claimant received a written warning for accumulating nine attendance points. The claimant worked on November 15, but her supervisor sent her home early because of an issue at work. The claimant was scheduled to work on November 16 and 17.

On November 16, the claimant had a 1:00 p.m. doctor's appointment. The claimant was pregnant and did not feel well. She did not get done at the doctor's office until 2:30 p.m. When the claimant had finished with her doctor's appointment, it was too late for her to carpool to work. The claimant's shift started at 3:45 p.m. The claimant understood the employer required employees to call two hours before a scheduled shift when the employee was unable to work as

scheduled. Two hours before her shift, the claimant was at her doctor's office and she did not have the employer's phone number with her. After her doctor's appointment on November 16 or on November 17, the claimant did not attempt to call the employer to report that she was unable to work these days.

In early November the claimant's doctor restricted her from working no more than 40 hours a week. The claimant had not worked 40 hours the week of November 12. She did not go to work or call to find out if she should report to work on November 17. When the claimant did not call or report to work on November 16 and 17, the employer assessed her three attendance points each day. If she had called on November 16 and reported she was ill and unable to work, she would have been assessed only one point for her November 16 and 17 absences.

The claimant reported to work on November 19. The claimant told the employer she had felt ill on November 16 and 17. The claimant also told the employer she understood she would receive points even if she would have called in November 16 and/or 17. Based on her understanding she did not call the employer either day.

On November 20, the employer discharged the claimant for violating the employer's attendance policy by accumulating more than 14 attendance points. The employer discharged the claimant for excessive absenteeism as defined by the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

On November 14, the claimant knew or should have known her job was in jeopardy if she accumulated six more attendance points. Even though the claimant would have received a point for her absences on November 16 and 17 if she had called and told the employer she was unable to work, she would only have ten attendance points instead of 15 points and the employer would not have discharged her for violating the employer's attendance policy.

Since the claimant did not properly report her November 16 and 17 absences, she intentionally disregarded the employer's interests and committed work-connected misconduct. As of November 18, 2012, the claimant is not qualified to receive benefits.

DECISION:

The representative's December 18, 2012 determination (reference 02) is affirmed. The employer discharged the claimant for reasons establishing work-connected misconduct. The

claimant is disqualified from receiving unemployment insurance benefits as of November 18, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll