

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**TAMMY M FREEMAN  
315 SE MCKINLEY AVE #40  
DES MOINES IA 50316**

**KATECHO INC  
4020 GANNETT AVE  
DES MOINES IA 50321**

**Appeal Number: 05A-UI-03138-CT  
OC: 02/20/05 R: 02  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tammy Freeman filed an appeal from a representative's decision dated March 17, 2005, reference 01, which denied benefits based on her separation from Katecho, Inc. After due notice was issued, a hearing was held by telephone on April 12, 2005. Ms. Freeman participated personally. The employer participated by Joyce Schmeling, Human Resources Manager, and Teresa Severino, Supervisor.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Freeman was employed by Katecho, Inc. from

September 13, 2001 until February 3, 2005 as a full-time production worker. She was discharged because of unsatisfactory attendance. When an individual receives seven attendance points, she is subject to discharge. Ms. Freeman's final absence was on February 2 when she gave timely notice of her intent to be absent due to illness.

Ms. Freeman was absent due to illness on August 4, October 11, and November 9, 2004. She was absent to attend to personal business on August 20 and December 6, 2004 and January 4, 2005. Ms. Freeman received a written warning on December 7, 2004 when she was at five points. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Freeman was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Moreover, there must be a current act of unexcused absenteeism in relation to the discharge date in order to sustain a disqualification from benefits.

Ms. Freeman's final absence of February 2 is excused as it was for reasonable cause, illness, and was properly reported. The most recent unexcused absence was on January 4 when she was absent for personal reasons. Absences due to matters of personal responsibility are not excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The absence of January 4 was approximately one month before the separation and would not, therefore, represent a current act of misconduct. Inasmuch as the discharge was not triggered by a current act of misconduct, no disqualification is imposed. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

#### DECISION:

The representative's decision dated March 17, 2005, reference 01, is hereby reversed. Ms. Freeman was discharged but a current act of misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/sc