

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLENE F PROSTROLLO
Claimant

APPEAL NO. 13A-UI-07987-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON RETAIL DELI MEATS INC
Employer

OC: 06/02/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 24, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 22, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with her attorney, Dennis McElwain. Matt Chase 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 laborer from August 30, 2000, to June 4, 2013. She was informed and understood that under the employer's no fault attendance policy, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they received 14 attendance points in a 12-month period. Points are given for unapproved absence and tardiness.

The employer discharged the claimant on June 4, 2013, because she had reached 14 points under the attendance policy. The final absences were on May 31 and June 1. She was sick and unable to work and called in properly to report her absences. Her prior attendance issues involved absences due to health problems where she properly reported her absences.

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).

The unemployment insurance rules provide: "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 claimant was discharged for absenteeism, but her absences were due to health problems and were properly reported. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated June 24, 2013, 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/pjs