

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MAGDALENO MARTINEZ**

Claimant

**APPEAL NO. 13A-UI-08403-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 06/16/13**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness  
871 IAC 24.32(8) – Current Act of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated July 5, 2013, reference 01, that held she was discharged for excessive unexcused absenteeism and tardiness on June 19, 2013, and benefits are denied. A hearing was held on August 21, 2013. The claimant and witness/union representative, Brian Ulin, participated. The employer did not participate.

**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 worker from November 15, 2004 to June 19, 2013. The claimant suffered from an illness during the last two years of employment and he had taken a medical leave of absence for several months due to the condition. He had doctor notes and excuses from missing work or being late to work based on medication he was taking to treat his illness. The employer discharged claimant on June 19, 2013 due to attendance issues. Claimant has grieved his employment termination. The employer failed to respond to the hearing notice.

**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 June 19, 2013, for excessive "unexcused" absenteeism/tardiness.

The employer failed to participate in this matter and offer evidence of job disqualifying misconduct. Claimant offered credible testimony as corroborated by his union representative his absenteeism issue was related to a health condition and he gave the employer doctor excuses. Absenteeism due to properly reported illness is not misconduct.

**DECISION:**

The decision of the representative dated July 5, 2013, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on June 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

rls/pjs