

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ZEHIRA BABIC**  
Claimant

**APPEAL NO. 07A-UI-06152-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 05-20-07 R: 03**  
**Claimant: Appellant (4)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.4-3 – Able and Available for Work

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 14, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 5, 2007. The claimant participated in the hearing with Interpreter Zijo Suceska. The employer provided a phone number prior to the hearing but was not available to participate in the hearing at the time of the hearing and did not request a postponement of the hearing as required by the hearing notice.

**ISSUE:**

The issues are whether the claimant voluntarily left her position due to a non-work-related injury and whether she is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Tyson Fresh Meats from January 18, 2000 to May 15, 2007. She suffered a non-work-related back injury and was unable to work pursuant to medical advice from a treating physician. She stopped calling in to report her absences after she knew she exceeded the allowed number of attendance points, and when she went to the workplace her locker was cleaned out and she was notified her employment was terminated. She has not yet received a full medical release from the treating physician and does not believe she can perform any work at this time.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is separated from her employment without good cause attributable to the employer and is not able and available for work.

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.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

While the claimant's separation does not appear to be disqualifying, because her absences were due to properly-reported illness until she "pointed out" on the attendance policy, the claimant has not been released to return to full work duties and does not believe she can perform any type of work at this time. Accordingly, although the separation may be due to absence related to properly-reported illness, she is not able and available to perform work at this time.

#### **DECISION:**

The June 14, 2007, reference 01, decision is affirmed. The claimant's separation was due to properly reported illness, but she is not able and available for work at this time. Benefits are withheld until such time as the claimant obtains a full medical release to return to some type of work and presents it to Iowa Workforce Development Department.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw