

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAFAELA MERO**

Claimant

**APPEAL NO. 14A-UI-02431-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 02/09/14**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated February 28, 2014, reference 01, that held she voluntarily quit without good cause on February 5, 2014, and benefits are denied. A hearing was held on April 9, 2014. The claimant, Attorney Willis Hamilton and Interpreter Ike Rocha, participated. Will Sager, Complex HR Manager, participated for the employer. Claimant Exhibits A – D, and Employer Exhibits 1 and 2 was received as evidence.

**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 was hired on March 29, 2005 and last worked as full-time production on February 10, 2014. The employer attendance policy provides that an accumulation of ten attendance points within a rolling calendar year can result in employment termination.

Claimant worked on January 29, 2014. She was aware that her husband left for surgery in Mexico due to financial considerations. After working hours she learned from her brother-in-law there was a surgical complication and he requested claimant to come to Mexico. The doctor agreed claimant should come to provide care for her husband.

Claimant arranged a plane flight to Mexico and left on January 30. She did tell a co-worker about her leaving and what she believed was an emergency. She instructed her daughter/employee to notify the employer and she did contact Calvin Riley (FSQA Manager) about her mother leaving, the reason for it, and that she would return on February 8.

While providing care for her husband in Mexico, his doctor provided some FMLA paperwork listing the period of incapacity from January 28 through February 28, 2014 and stating his patient needed care.

Claimant returned to work on February 10. Management terminated her employment on February 11, 2014 for excessive unexcused absenteeism. The employer considered her nine days of absence times three points a day as unexcused and it was excessive (twenty-seven points) in violation of the attendance policy.

Claimant tried to save her job by presenting her case to the employer alternative dispute resolution committee. Her request was denied on February 21. The employer concluded claimant had failed to personally notify management of her reason for absence, she failed to properly request a leave of absence, and the medical documentation was incomplete to support FMLA request.

### **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 February 11, 2014, for excessive "unexcused" absenteeism. While the employer might be justified to discharge according to its policy, job disqualifying misconduct must be established to deny benefits.

Claimant had no intention on January 29 to leave for Mexico due to her husband's surgery. The situation became an emergency when after working hours she learned he needed her care. She immediately made air-flight arrangements and left on January 30. She had no reasonable opportunity to request a leave of absence or personally notify the employer for the necessity of her absence. She acted responsibly by having her daughter/employee a member of management and the reason for the absence.

The doctor provided sufficient medical information claimant was needed to provide patient/husband care. Although the FMLA paperwork is incomplete, there was no pre-approved claimant leave request. The paperwork supports the need for claimant's absence period that is based on excusable reasons. The department has an administrative rule 871 IAC 24.26(9) that is applicable in this matter as claimant had a compelling personal reason to leave to provide

care for her husband and returned within ten working days to the employer. This rule provides an employee has good cause for a voluntary quit where the employer fails to re-employ. Since the employer terminated claimant, this good cause absence is a discharge for no disqualifying misconduct.

**DECISION:**

The decision of the representative dated February 28, 2014 reference 01 is reversed. The claimant was not discharged for misconduct in connection with employment on February 11, 2014. 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

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