

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CELESTE L CIVIDANES-PALLARES**  
Claimant

**APPEAL NO. 15A-UI-05482-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS  
CORPORATION**  
Employer

**OC: 04/12/15  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Cargill Meat Solutions Corporation (employer) appealed a representative's April 28, 2015, decision (reference 01) that concluded Celeste Cividanes-Pallares (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 19, 2015. The claimant participated personally. The employer participated by Emily Norton, Unemployment Representative. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 7, 2014, as a full-time storeroom assistant. The claimant signed for receipt of the employer's handbook on May 17, 2011. The handbook indicates an employee will be terminated when she accumulates ten attendance points. On February 17, 2015, the claimant signed a first write-up, on March 3, 2015, a warning letter, on March 12, 2015, another first write-up, and on March 25, 2015, a second write-up. All of the disciplines were for attendance. The claimant properly reported her absence due to medical issues seven times. The employer did not give the claimant a copy of any of the disciplines.

The claimant had filed for Family Medical Leave (FMLA) due to pregnancy and was waiting for confirmation of its approval. Her clinic had faxed the paperwork to the employer's third-party provider three times. The provider told the employer it did not receive it and, therefore, denied the claimant's FMLA. On April 8, 9, 11, and 12, 2015, the claimant properly reported absence due to a medical issue. April 10, 2015, was the claimant's day off. Her physician released her to return to work on April 13, 2015. She returned to work on April 13, 2015, with her doctor's note. The employer terminated the claimant on April 14, 2015, for excessive absenteeism. The claimant is under no restrictions.

The claimant filed for unemployment insurance benefits with an effective date of April 12, 2015. The employer participated personally at the fact-finding interview on April 27, 2015, by Emily Norton.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported illness which occurred on April 8, 9, 11, and 12, 2015. The claimant's absence does not amount to job misconduct because it was properly reported and a doctor's note was provided. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's April 28, 2015, decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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