

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROSA I CAVAZOS**

Claimant

**APPEAL NO: 18R-UI-09068-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 06/17/18**

**Claimant: Appellant (2)**

Iowa Code § 96.6 – Timeliness of Appeal

Iowa Code § 96.5(2)a - Discharge

**STATEMENT OF THE CASE:**

Rosa Cavazos, the claimant, filed an appeal from a representative's unemployment insurance decision dated July 5, 2018, (reference 01) which denied unemployment insurance benefits, finding that the claimant had been discharged from work May 11, 2018 for excessive absenteeism after being warned. A hearing was scheduled for August 1, 2018, notices were sent to the parties last known addresses of record. Claimant did not participate in the hearing. On August 10, 2018, an administrative law judge decision was entered dismissing the claimant's appeal. Ms. Cavazos filed an appeal with Employment Appeal Board. On August 28, 2018, the Employment Appeal Board remanded the matter to the Appeal Section to conduct a due process hearing finding that the claimant had established her intention to follow through with the appeal process by attempting to call in for the hearing within a reasonable timeframe that the time scheduled for the August 1, 2018 telephone hearing. In compliance with the Appeal Board's directive notices were sent to the parties and a telephone conference hearing was scheduled for and held on September 19, 2018. Claimant participated. Although duly notified, the employer did not respond to the notice of hearing and did not participate. Claimant's Exhibits 1, 2, 3, 4, 5 were admitted into the hearing record.

**ISSUE:**

The issues are whether the claimant filed a timely appeal and whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: a disqualification decision was mailed to the claimant's last known address of record on July 5, 2018 and received by the claimant within three days thereafter. Ms. Cavazos does not speak the English language. The claimant testified that she made a request of a workforce development to assist her in understanding the decision and/or filing an appeal. Ms. Cavazos waiting for a substantial period of time for the promised call but did not receive a call. She then attempted to find someone to interpret the document for her. As soon as she was able to

interpret the information, she immediately filed her appeal on August 28, 2018. There being no evidence to the contrary, the administrative law judge concludes that the claimant's appeal should be considered timely as the delay was because she was waiting for assistance that she had been promised.

Ms. Cavazos was employed by Tyson Fresh Meats, Inc. from April 5, 2015 until May 11, 2018, when she was discharged from employment. Ms. Cavazos worked as a production worker and was paid by the hour.

On March 8, 2018, Ms. Cavazos requested a leave of absence from Tyson Fresh Meats, Inc. for the purpose of visiting and assisting her father who was seriously ill in the state of Texas. Claimant's leave of absence began the following day, March 19, 2018 and was to continue until her return date of April 2, 2018.

Prior to the expiration of Ms. Cavazos' leave of absence, she requested an extension of the leave of absence from her employer because her father was terminally ill and the claimant needed to spend more time with him. Although the claimant submitted all documentation that the employer had requested, she was later informed that the extension had not been granted and that she had been terminated from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence establishes work-related misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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(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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In the case at hand, the claimant participated personally and provided sworn testimony. In contrast, the only evidence in support of the employer are statements made to Iowa Workforce Development. In the absence of any other evidence that equal weight either contradicting denying, or explaining the evidence as given by the claimant, the weight of the evidence is established in the favor of Ms. Cavazos.

The claimant testified that she had requested a leave of absence and that prior to the expiration of the initial leave of absence she had requested an extension and she had provided all the documentation that the employer had requested. Claimant believed that the leave of absence had been extended. However, when she attempted to return to work she was informed that she had been discharged for failing to report back to work at the end of the initial leave of absence. It is the claimant's belief that the documentation she had submitted in advance of the initial leave of absence had been received by the employer, because she had not received any indication to the contrary before being informed that she had been discharged. The administrative law judge finds the claimant to be credible and finds that her testimony is not inherently improbable. There being no evidence to the contrary, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's unemployment insurance decision dated July 5, 2018, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn