

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMMY S JONES**  
Claimant

**APPEAL NO. 13A-UI-10381-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 08/11/13**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Tyson, filed an appeal from a decision dated August 29, 2013, reference 01. The decision allowed benefits to the claimant, Tammy Jones. After due notice was issued, a hearing was held by telephone conference call on October 7, 2013. The claimant participated on her own behalf. The employer participated by Human Resources Clerk Kristi Fox.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Tammy Jones was employed by Tyson from October 11, 1994 until August 8, 2013 as a full-time production worker. She called in absent Friday, July 26, 2013, because of problems with her asthma. Her supervisor asked her to come in and work on Saturday and she agreed. She was not scheduled to work again until Tuesday, July 30, 2013, and called in that day and every day afterward except for August 2, 2013.

Ms. Jones had sought treatment for the asthma on Sunday, July 28, 2013, and was given some treatment but told to consult with her family doctor. This was done on July 29, 2013, and she had a follow-up appointment on August 5, 2013. At that appointment the doctor gave her a statement excusing her from work and certifying her as being able to return on August 8, 2013. She brought the note in to the nurse's station at Tyson on August 5, 2013, and the nurse accepted it. Ms. Jones did not call in on August 6 and 7, 2013, because she understood she was already excused for those dates.

She returned to work on August 8, 2013, and was discharged by her supervisor at that time for exceeding the allowable number of attendance points. The employer's witness verified she did call in each of the days she was scheduled to work after July 26, 2013, and had not checked with the company nurse to verify the doctor's note.

Ms. Jones had not received any warnings regarding absenteeism prior to July 2013.

## 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(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.

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 record establishes the claimant called in absent every day except August 2, 2013. The employer was unable to verify the submission of the doctor's note given to the nurse which excused Ms. Jones for the entire period she was gone.

A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). There is only one day she failed to call in and the administrative law judge cannot consider one no-call/no-show to work to constitute excessive, unexcused absenteeism. Disqualification may not be imposed.

**DECISION:**

The representative's decision of August 29, 2013, reference 01, is affirmed. Tammy Jones is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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