

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HANNA M YAR**  
Claimant

**APPEAL NO. 10A-UI-02713-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**Original Claim: 01/17/10  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Hanna Yar filed a timely appeal from a representative's decision dated February 10, 2010, reference 01, which denied benefits based upon her separation from Tyson Fresh Meats, Inc. After due notice was issued, a hearing was held in Council Bluffs, Iowa, on May 5, 2010. The claimant participated personally. The employer participated by Mr. Mike LeFevre, human resource manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Hanna Yar was employed by Tyson Fresh Meats from September 20, 2004, until August 26, 2009, when she was discharged for failing to report to work without notifying the employer that she would be absent. Ms. Yar worked as a full-time production worker and was paid by the hour. The claimant's last day on the job was August 20, 2009. The claimant did not again report for work and did not provide any notification to the company that she would be absent as required by company policy. She was discharged from employment effective August 26, 2009. Company policy requires that employees contact the employer prior to the work shift each day that they are going to be absent. Ms. Yar was aware of the policy and had followed it in the past.

Ms. Yar had been unexpectedly hospitalized during the period in question. Ms. Yar understood that she or a family member was required to contact the employer each day that she was absent to report her impending absences. The claimant relied upon a family member to report her absences; however, the family member did not do so. Ms. Yar did not have her employer's telephone number with her when she was hospitalized; however, the number was available to the claimant via telephone book or directory services.

Ms. Yar is eligible to apply for new employment with the company.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for conduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The evidence in the record establishes that Ms. Yar understood that she was to notify her employer each day that she was absent to report her impending absence before the beginning of the work shift. Ms. Yar had done so in the past. After being hospitalized, the claimant did not personally contact her employer each day but instead relied upon family members to do so. Ms. Yar did not ensure that the family members had provided notification as she had instructed them. Based upon the claimant's failure to report for scheduled work for several days and her lack of notification to the employer, Ms. Yar was discharged from work.

Although the administrative law judge is sympathetic to Ms. Yar's situation, the administrative law judge nevertheless concludes that the claimant's failure to properly report her impending absences showed a disregard for the employer's interests and standards of behavior that they had a right to expect. Ms. Yar's discharge therefore took place under disqualifying conditions. Benefits are withheld.

**DECISION:**

The representative's decision dated February 10, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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