

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ATAK WOL
Claimant

APPEAL NO. 06A-UI-11057-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 10-01-06 R: 02
Claimant: Respondent (1)**

Section 96 5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 1, 2006, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 4, 2006. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Terry Carmichael, Employment Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Tyson Fresh Meats from August 15, 2005 to September 11, 2006. The employer uses a no-fault, point-based attendance policy. Employees receive one point for an excused absence, two points if they are two or more hours late without proper notification and three points for an absence without proper notification. Employees are terminated upon reaching 14 points. The claimant was discharged for exceeding the employer's allowed number of attendance points. On December 13, 2005 and January 24, 2006, she received one point for absences due to properly reported illness; on February 13, 2006, she received three points for an absence due to transportation issues; on February 20, February 22, April 10, and May 19, 2006, she received one point for properly reported illness; on August 3, August 4, and August 10, 2006, she received one point for unexcused tardiness; on September 5 and September 6, 2006, she received three points for an absence due to illness without proper notification. The employer suspended the claimant when she called September 6, 2006, and told her to provide medical documentation of her illness. On September 11, 2006, the employer asked the claimant to come in and bring her documentation but the claimant did not have any; and the employer told her that even if it only assigned her one point for her last two absences, she would be over the allowed number of points, so her employment was terminated. The claimant received a verbal warning January 24, 2006; written

warnings February 13 and May19, and a written warning and in-person counseling and was suspended September 7, 2006, because of absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant did exceed the allowed number of attendance points, 12 of her 18 points, including the final two absences, were accumulated due to illness. Because the final absences were related to reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The November 1, 2006, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw