

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANYEISHA AUSTIN
Claimant

APPEAL NO: 09A-UI-02254-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

**Original Claim: 01-04-09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 10, 2009, reference 01, 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 March 5, 2009. The claimant participated in the hearing. Rick Wood, Human Resources Manager and Jennifer Stubbs, Human Resources Benefits Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 laborer for Beef Products from October 3, 2006 to January 5, 2009. The employer's attendance policy allows employees to accumulate 14 points during a rolling calendar year before termination occurs. In 2008 and the beginning of 2009 the claimant was absent approximately 94 times due to illness and on many of those occasions she used FMLA or intermittent FMLA and usually provided a doctor's excuse for her absences. Each time she was absent and received a point the employer made her aware in writing of the number of points she had to date. On December 5, 2008, the claimant received a final written warning for excessive absenteeism and the employer told her she needed to be more diligent in contacting the employer when she was gone and could not continue to miss so much work. She was terminated from employment January 5, 2009.

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 had an inordinate amount of absences, her absences were due to a chronic illness and most were properly reported and accompanied by a doctor's note. Although the administrative law judge can understand the employer's frustration with this situation, because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and benefits must be allowed.

DECISION:

The February 10, 2009, reference 01, 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/pjs