

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARISSA A GERICKE
Claimant

APPEAL NO. 07A-UI-04550-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

OC: 04/08/07 R: 03
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Beef Products, Inc. (BPI) filed an appeal from a representative's decision dated April 27, 2007, reference 02, which held that no disqualification would be imposed regarding Carissa Gericke's separation from employment. After due notice was issued, a hearing was held by telephone on May 21, 2007. Ms. Gericke participated personally. The employer participated by Rick Wood, Human Resources Manager, and Jennifer Stubbs, Human Resources Benefits Supervisor.

ISSUE:

At issue in this matter is whether Ms. Gericke was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Gericke was employed by BPI from January 26, 2006 until April 12, 2007. She was last employed full time as an equipment operator. She was discharged because of her attendance. The employer tracks attendance on a point system and an individual is subject to discharge when she reaches 14 points.

All of Ms. Gericke's absences of a full day were due to illness and were properly reported. She was late reporting to work due to oversleeping on three occasions, the last of which was November 22, 2006. She was provided notice whenever she accrued attendance points. Her final notice was on March 25, 2007 when she was at 13 points. Ms. Gericke called to report that she would not be at work due to illness on April 9, 10, and 11. She returned to work on April 12 with a doctor's excuse. However, her final absences caused her to exceed the 13 points allowed and, therefore, she was discharged. Attendance was the sole reason for the discharge.

Ms. Gericke had indicated to a supervisor that she was looking into attending school. She had not given notice that she intended to quit on a specific date.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Tardiness in reporting to work is considered a limited absence from work. There must be a current period of unexcused absence to support a disqualification from benefits.

Ms. Gericke's three occasions of tardiness are all unexcused as they were due to oversleeping, which is not reasonable grounds for missing work. Her remaining absences from work are all excused as they were for reasonable grounds, illness, and were properly reported. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. Inasmuch as the last unexcused absence was on November 22, 2006, there was no current period of unexcused absence in relation to the April 12, 2007 discharge date. While the employer may have had good cause to discharge Ms. Gericke in line with its policy, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated April 27, 2007, reference 02, is hereby affirmed. Ms. Gericke was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs