

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**VANESSA C MUTESI**  
Claimant

**APPEAL NO: 18A-UI-11513-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 10/07/18**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 14, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 12, 2018. The claimant participated in the hearing with CTS Language Link Interpreter Medard (23042). Katharine Schoepske, Human Resources Administrative Assistant, 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, Inc. from April 16, 2018 to September 5, 2018. She was discharged from employment due to a final incident of absenteeism that occurred on August 31, 2018.

The employer's attendance policy is a no-fault policy and employees are discharged upon reaching ten points in a rolling calendar year. Employees receive a verbal warning after accumulating three points; a written warning after accumulating six points; a final written warning after accumulating nine points; and are discharged upon reaching 10 points.

The claimant was a no-call/no-show August 2, 2018, and received three points and a verbal warning; she was a no-call/no-show August 3, 2018, and received three points and a written warning; she was a no-call/no-show August 30, 2018, and received three points and a final written warning; and was a no-call/no-show August 31, 2018, and received three points and her employment was terminated September 5, 2018. There is no evidence that these absences were related to illness. The claimant was aware her job was in jeopardy due to her attendance. The employer terminated her employment for excessive unexcused absenteeism.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final no-call/no-show absence, in combination with the claimant's history of no-call/no-show absenteeism, is considered excessive. Therefore, benefits must be denied.

**DECISION:**

The November 14, 2018, reference 01, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she 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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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn