

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**TIERRA M CANNON**  
Claimant

**APPEAL NO: 19A-UI-06554-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 07/28/19**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 16, 2019, 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 September 12, 2019. The claimant participated in the hearing. Katie Schoepske, Human Resources Administrator, 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 20, 2018 to July 30, 2019. She was discharged for exceeding the allowed number of attendance points.

The employer's attendance policy assesses employees one attendance point for a full day absence and one-half point for an incident of tardiness. An employee must call at least 30 minutes prior to the start of her shift to report an absence or she is assessed three points. Absences accompanied by a doctor's note can be excused at the discretion of the employee's supervisor. Termination can occur when an employee reaches ten attendance points.

On October 29, 2018, the claimant was tardy and received one-half point; on November 14, November 26 and November 27, 2018, she was absent due to properly reported illness and received one point for each day; on December 4, 2018, she left early and received one-half point; on December 6, 2018, she was tardy and received one-half point; on December 10, 2018, she was absent due to properly reported illness and received one point; on December 14, 2018, she left early and received one-half point; on December 19, 2018, she was absent due to a family illness and received one point; on February 2 and February 7, 2019, she was absent due to properly reported illness and received one point for each day; on February 19, 2019, she did not have childcare and received one point; on July 18, 2019, she called in late and received

three points; and on July 23, 2019, she was absent due to properly reported illness with a doctor's excuse and received one point.

The claimant received written warnings for attendance December 4, 2018 and December 19, 2018. The employer terminated her employment July 30, 2019.

### **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, 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.

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). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

**DECISION:**

The August 16, 2019, reference 01, decision is reversed. 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/scn