

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEYANA BROWN

Claimant

APPEAL NO: 12A-UI-07286-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 05/06/12

Claimant: Appellant (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Keyana Brown (claimant) appealed an unemployment insurance decision dated June 11, 2012, reference 02, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Tyson Fresh Meats, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 12, 2012. The claimant participated in the hearing. The employer participated through Jamal Grcic, Human Resources Clerk. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production worker from July 5, 2011 through May 1, 2012. She worked on April 23, 2012 but called in sick the next three days. The employer said she was a no-call/no-show on Friday April 27, 2012 but that no-call/no-show was not counted against her. The claimant denied she was a no-call/no-show. She was not scheduled on the weekend and worked on April 30 and May 1, 2012.

The employer initially testified that the claimant's last day of work was May 1, 2012 and she was a no-call/no-show on May 2, 3, 4 and 7, 2012. The employer terminated the claimant out of the system on May 14, 2012 due to job abandonment. The employer witness testified they never heard back from the claimant after that.

The claimant testified that after she worked on May 1, 2012, she was called into the converting office by Colleen and discharged for attendance points. She had received warnings for attendance but was not on a final warning for attendance. The claimant missed work for a week due to illness but properly reported her absences, which were also excused by her doctor.

The employer witness subsequently testified that the claimant was discharged on May 1, 2012 by Terry Wray.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on May 1, 2012 for attendance. The employer failed to present reliable evidence and did not meet its burden. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated June 11, 2012, reference 02, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css