

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CADEJAH BURT
Claimant

APPEAL NO: 14A-UI-03309-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/02/14
Claimant: Appellant (2-R)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 24, 2014, 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 April 17, 2014. The claimant participated in the hearing. Kristi Fox, Human Resources Clerk, 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 September 10, 2012 to February 20, 2014. She was discharged for exceeding the allowed number of attendance points.

The employer uses a no-fault attendance policy and employees are generally discharged upon reaching 10 points. A claimant's supervisor can excuse her absences if she demonstrates good cause, such as a doctor's excuse. Points drop off after one year.

The claimant was absent due to illness February 25, March 8, March 22, April 5, May 3, May 19, July 19 and November 12, 2013, and February 4, 2014, and received one point. She left early due to illness May 17, October 16 and December 28, 2013, and was tardy August 15, 2013, and received one-half point for each of those occurrences. She was absent due to properly reported illness February 18, 2014, and her employment was terminated.

The claimant received a written warning after accumulating 10.50 points November 12, 2013, and her supervisor removed .50 points from her total; she was discharged but reinstated November 26, 2013, after reaching 9.5 points; she received a written warning and was allowed to continue in her position December 12, 2013, after human resources removed .50 points from

her total; and she received a written warning and was allowed to continue working for the employer January 15, 2014, after her supervisor removed 4.00 points from her total.

The claimant was aware her job was in jeopardy. She suffers from diabetes and is experiencing a high-risk pregnancy at this time. Her labor is expected to be induced May 29, 2014.

There are issues of whether the claimant is able and available for work that have not yet been heard and adjudicated by the Claims Section.

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). 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.

In this case all but two of the claimant's absences were due to properly reported illness, and the two no-call no-shows occurred August 19, 2013 and January 5, 2014, and were not the last incident of absenteeism. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

There is an issue of whether the claimant is able and available for work during her high-risk pregnancy. That matter is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The March 24, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The issue of whether the claimant is able and available for work is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs