

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBRA L INGHAM**  
Claimant

**APPEAL NO. 07A-UI-03219-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 02/11/07 R: 03  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated March 20, 2007, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 16, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Beth Engels. Jerome Renken participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a production employee from January 6, 2004, to February 12, 2007. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer one-half hour before the start of their shift if they were not able to work as scheduled and were subject to termination if they received 14 attendance points in a 12-month period. Points are given for unapproved absence and tardiness.

As of February 7, 2007, the claimant had accumulated 13 attendance points. All of the points were assessed for properly reported illness or injury. On each of the days in question the claimant was unable to work.

On February 7, 2007, the claimant was scheduled to work at 7:30 a.m. When she went out to start her car at 6:30 a.m., the car would not start. The claimant called in and properly reported that she would be late for work due to the problems with her car. She arranged to have the car towed so that it could be fixed, and arranged to take a cab to work. She arrived at work at approximately 9:00 a.m.

The employer assessed the claimant one point for her tardiness. The employer discharged the claimant on February 12, 2007, for accumulating 14 attendance points in a 12-month period.

## REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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(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.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant under its policy, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The claimant's absences were due to legitimate illness and were properly reported. The final incident of tardiness involved a situation beyond the claimant's control. She properly notified the employer that she would be late for work and arrived at work as soon as possible after arranging for a cab to pick her up.

**DECISION:**

The unemployment insurance decision dated March 20, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw