

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH J BOHLING

Claimant

APPEAL NO: 06A-UI-08521-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

**OC: 07/02/06 R: 03
Claimant: Appellant (2)**

Section – 96.5-2 – Discharge for Misconduct

STATEMENT OF THE CASE:

Deborah J. Bohling filed a timely appeal from the August 15, 2006, reference 02, decision that denied benefits. After due notice was issued, a telephone hearing was held on September 27, 2006. Ms. Bohling participated and testified on her own behalf. Appearing as a witness for the employer was Ms. Elena Reader, Second Shift Manager.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record the administrative law judge finds: Deborah Bohling was employed by Tyson Fresh Meats, Inc. as a full-time production worker from March 21, 2006 until May 25, 2006 when she was discharged by the employer. The claimant was discharged for exceeding the permissible number of attendance infractions allowed for probationary employees. The employer is a meat processing company, which has an attendance policy that provides for discharge of employees who have accumulated two and a half or more attendance infraction points during their initial 60 days of probationary employment. Ms. Bohling was absent on March 29, 2006 due to personal illness and reported her impending absence prior to the beginning of the work shift as required by company policy. On May 2, 2006, the claimant failed to report for work due to the illness of her daughter and reported her impending absence as required. On May 15, 2006, Ms. Bohling was unable to report to work as her daughter was once again ill and her absence was reported as required. On the following day, May 16, 2006, the claimant's daughter had a seizure upon being returned from Iowa City where she had been taken for medical treatment. Ms. Bohling was unable to report to work that day and provided proper notification as required.

Ms. Bohling attempted to provide documentation from the treating physicians who verified that her absence due to her daughter's illness was necessary. The employer found the initial document submitted by Ms. Bohling was not sufficient and requested a statement to be

provided on letterhead and signed by the doctor. Ms. Bohling repeatedly reported for work and attempted to provide the required notification. Upon reporting and providing the notification in the manner she believed that it was required by the employer on May 25, 2006, she was nonetheless discharged.

REASONING AND CONCLUSIONS OF LAW:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The question is whether the evidence on the record establishes that the claimant was discharged for misconduct in connection with the employment. It does not. The evidence establishes that Ms. Bohling was absent due to illness and the serious illness of her daughter. The evidence establishes that the claimant followed the company's call-in procedures at all times to inform the company of her impending absences and the reasons for them. In the first incident the claimant was absent due to her personal illness. Subsequent absences were due to the serious medical condition of her daughter including a seizure that occurred upon the claimant returning her daughter from medical treatment in Iowa City, Iowa. The claimant attempted to the best of her ability to immediately provide a doctor's statement verifying to the employer that her most recent absences were related to her daughter's serious medical condition. The employer found the initial statement by the physician to not be sufficient and requested a more definitive doctor's statement.

Although the claimant repeatedly reported for work and attempted to provide the doctor's statement as required, she was not allowed to return to work. Ultimately on or about May 25, 2006, the claimant supplied a doctor's note in the form and manner that she believed that the employer had specifically requested. The claimant's employment was terminated at that time by the employer.

In this case the claimant participated personally and provided sworn firsthand testimony. The testimony provided by the employer's witness was primarily based upon hearsay. Although

hearsay is admissible in the administrative proceedings, it cannot be given the same weight as sworn direct testimony. The administrative law judge finds that the claimant's testimony is credible and not inherently improbable. Greater weight must, therefore, be given to Ms. Bohling's testimony in this matter.

Disqualifying misconduct on the part of the claimant at the time of separation has not been shown. It must, therefore, be held that the claimant's discharge from employment took place under non-disqualifying conditions.

DECISION:

The representative's decision dated August 15, 2006, reference 02, is reversed. The claimant was discharged under non-disqualifying conditions. Benefits are allowed, provided she is otherwise eligible.

Terence Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs