

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**FINESSE G STINSON**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 14A-UI-12958-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/16/14  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 10, 2014 (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 8, 2015. Claimant participated. Employer opted not to participate.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production worker and was separated from employment on November 18, 2014 when she was discharged. The employer alleged she did not call in during her leave of absence. She did call in until she presented medical documentation to the company nurse to support the dates of absence. The nurse then has the responsibility to relay the information to the supervisor.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. Claimant properly reported her absences because she called in until she provided written medical documentation outlining the dates she would be unable to work. The employer has not established that claimant had excessive absences that would be considered unexcused for purposes of unemployment insurance eligibility. Because the absences were related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

**DECISION:**

The December 10, 2014 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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