

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAKINA D JONES

Claimant

APPEAL NO. 09A-UI-07545-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 04/19/09

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Sakina Jones, filed an appeal from a decision dated May 13, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 9, 2009. The claimant participated on her own behalf. The employer, Tyson, did not participate.

The employer had requested a postponement in a letter received by the Appeals Section May 26, 2009, as the employer's witness would not be available on the day the hearing was scheduled. The administrative law judge contacted the employer's representative to say the hearing would not be postponed until it could be established when the witness would be available. The representative never contacted the Appeals Section again with the information and the postponement was not granted.

ISSUE:

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

FINDINGS OF FACT:

Sakina Jones was employed by Tyson from October 14, 2008 until April 21, 2009 as a full-time production worker. She had received the employer's attendance policy and knew she was subject to discharge if she accumulated 14 points. The last time she obtained a print out of her point total was around April 1, 2009, when she had 10.5 points.

Ms. Jones had been working second shift but had to be moved to the first shift as she had taken out a restraining order against her domestic partner who also worked on the second shift. This was effective April 13, 2009, but she was 15 minutes late to work every day that week because she did not know when that particular production line started.

On Thursday, April 16, 2009, she was upset because a co-worker, who had called in absent that day, had left voice mail messages on her cell phone accusing her of sexual misconduct and other things. Instead of bringing the phone to her supervisor or the human resources

representative to listen to the messages, she left work. When she returned to work on April 17, 2009, she was sent home and then suspended on Monday, April 20, 2009. The next day she met with the human resources representative who told her she was fired for accumulating too many points.

REASONING AND CONCLUSIONS OF 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 claimant had been aware of her total number of points, and the number she could accumulate before she was discharged. After receiving the final report she was late to work several days, and finally left in the middle of her shift without the approval of her supervisor. While it may be understandable she was upset at receiving the voice mails on her cell phone, she did not attempt to bring these messages to the attention of her supervisor of the human resources office. With such proof she could have established harassment by a co-worker during work hours. Instead she elected to leave without approval, accumulating the final points

which caused her to be discharged. Leaving in the middle of the shift without approval is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of May 13, 2009, reference 01, is affirmed. Sakina Jones is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs