

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JANET R PETERS  
4313 FLOYD BLVD  
SIOUX CITY IA 51108-1507**

**INTERBAKE FOODS  
1 DEVILS FOOD  
N SIOUX CITY SD 57049**

**Appeal Number: 06A-UI-03123-HT  
OC: 02/12/06 R: 01  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Interbake Foods, filed an appeal from a decision dated March 8, 2006, reference 01. The decision allowed benefits to the claimant, Janet Peters. After due notice was issued a hearing was held by telephone conference call on April 6, 2006. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Assistant Human Resources Manager John Kreber.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Janet Peters was employed by Interbake Foods from December 14, 2005 until February 14, 2006. She was a full-time packer.

Ms. Peters was on a probationary period and under company policy could be fired after accumulating eight attendance points. She was absent on December 21 and 22, 2005, because of her father's illness and subsequent death, and called in each day to report her absence. Each of those absences was assessed two points. The company was shut down on December 23 through 26, 2005, and she was off December 27, 2005, with permission to attend her father's funeral and was not assessed any points.

On December 28, 2005, she called in absent for personal reasons related to her father's death and was given two points for that absence. She received a written warning at that time as she had accumulated six points with that absence. On February 13, 2006, she was a no-call/no-show to work because she had not checked the schedule to know she was to work that day. A no-call/no-show is assessed four points and she then had a total of ten. Assistant Human Resources Manager John Kreber discharged her by phone on February 14, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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.

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).

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 was discharged for accumulating ten attendance points during her probationary period. Only one, the no-call/no-show on February 13, 2006, may be considered unexcused under the provisions of the Iowa Unemployment Security chapter of the Iowa Code. The other absences were all associated with the illness and death of her father and were properly reported. The administrative law judge cannot therefore consider one no-call/no-show to constitute excessive, unexcused absenteeism and disqualification may not be imposed.

DECISION:

The representative's decision of March 8, 2006, reference 01, is affirmed. Janet Peters is qualified for benefits, provided she is otherwise eligible.

bgh/pjs