

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA LOFTIN**  
Claimant

**APPEAL NO: 10A-UI-09428-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**OC: 06-06-10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 28, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 19, 2010. The claimant participated in the hearing. The employer notified the Appeals Section it did not wish to participate in the hearing.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Cargill from July 27, 2006 to June 5, 2010. She was discharged for exceeding the allowed number of attendance points. The claimant accumulated six points prior to May 24, 2010, for properly reported illnesses, some with accompanying doctor's excuses. She was diagnosed with post-partum depression and was off the week of May 24, 2010, with a doctor's note. The claimant was being treated with medication and therapy. She received two points for that week because the employer stated the claimant failed to call in one day, a charge the claimant denied. The claimant returned to work June 1, 2010, and received a written warning for her absence the week of May 24, 2010. She was then off June 2 and 3, 2010, due to properly reported illness and was discharged for exceeding 10 points when she returned to work June 5, 2010. She is no longer suffering from post-partum depression.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason and is able and available to work.

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(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.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant did exceed the allowed number of attendance points, her absences were due to properly reported illness, most with a doctor's excuse. Although she did not have a doctor's excuse for her absences June 2 and 3, 2010, those absences came a day after she returned to work with a doctor's excuse stating she had post-partum depression and it is not unreasonable to believe she was still suffering from that illness June 2 and 3, 2010. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Additionally, the claimant is no longer being treated for post-partum depression and is able and available for work. Therefore, benefits are allowed.

**DECISION:**

The June 28, 2010, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs