

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARB SUDEN
Claimant

APPEAL NO. 08A-UI-00869-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 12-16-07 R: 12
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 15, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 11, 2008. The claimant participated in the hearing. Hal Edrington, Human Resources Manager, participated in the hearing on behalf of the employer.

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 general laborer for Tyson Fresh Meats from October 30, 2003 to November 1, 2006. The employer uses a no-fault attendance policy and employees are discharged after reaching 14 points. An excused incident of tardiness is assessed one-half point; an unexcused incident of tardiness is assessed one point; a properly reported absence is assessed one point; and an absence which is not properly reported is assessed three points. Three or more days of properly reported absence is assessed one point. Points drop off after 12 months. On April 25, 2006, May 1, 2006, and May 9, 2006, the claimant was absent due to properly reported illness and received three points; on June 13, 2006, she had an excused incident of tardiness and received one-half point; on July 12, 2006, she was absent due to properly reported illness and received one point; on July 25, 2006, she was absent due to a non-properly reported incident and received three points; on August 7, 2006, she was absent due to a properly reported illness and received one point; on August 10, 2006, she was absent due to a non-properly reported incident and received three points; on August 18 and October 26, 2006, she was tardy because she overslept and received one point for each incident; and on November 1, 2006, she was tardy because she did not have transportation and received one point for a total of 14 points and her employment was terminated. She received

an absence notice April 25, 2006; a written warning May 9, 2006; and a written warning with counseling. The claimant testified she was experiencing personal problems with her children.

The claimant has not claimed or received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). While six of the claimant's absences and eight of her 14 points were due to illness, the remainder were due to tardiness and late calls. Although the claimant was having personal problems and had good personal reasons for some of her absences that is not a good cause reason for the remaining six points or the last absence which was due to lack of transportation. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The January 15, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time

as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css