

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NECCY M MARABE**  
Claimant

**APPEAL NO. 13A-UI-13352-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 11/03/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated November 26, 2013, reference 01, that held she was discharged for excessive unexcused absenteeism on November 4, 2013, and benefits are denied. A hearing was held on December 23, 2013. The claimant, and witness, Michael National, participated. The employer did not participate.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on December 18, 2001 and last worked as a full-time general labor on November 4, 2013. The claimant received the employer attendance policy that provides for a point system for attendance issues.

The employer changed the termination threshold from fourteen to ten points in September 2013. Claimant had accumulated points when the change was made. She was late given a warning she was nearing the termination point. She was discharged on November 4 for being late to work on October 29 that is one point that put her over ten points.

The employer called in and designated Will Sager (HR Manager) to be called to the hearing. He left a voice message he was gone. An attempt to contact another designated person was not successful.

**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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on November 4, 2013, for excessive "unexcused" absenteeism. The employer failed to participate in this hearing to show the attendance point accumulation was due to misconduct.

**DECISION:**

The decision of the representative dated November 26, 2013, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on November 4, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs