

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNIE R CHRISTIAN

Claimant

APPEAL NO: 11A-UI-03528-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 02/13/11

Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 18, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing, with her daughter, Tatiana Baker, as her witness. Jim Hook, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct, or did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer on November 15, 2010. The employer hired her to work full time. The employer's attendance policy allows employees to accumulate ten attendance points before the employer discharges an employee for excessive absenteeism. The claimant understood that as a new employee, the employer would discharge her if she accumulated four attendance points.

When the claimant started working, she drove her daughter's car to work. The claimant lives 45 to 60 minutes from work. It was not safe for the claimant to drive her daughter's car on snow and ice in February because of the condition of the tires. When the claimant could not drive her daughter's car, she contacted a human resource representative to find out if she could ride with a co-worker to work. The human resource representative could not find another employee for the claimant to ride to work with.

The claimant did not report to work to on February 8, 9, and 10. Although the employer did not have a record of the claimant calling to report she was unable to work, the claimant asserted she did. The claimant did not report to work these days because she did not have transportation to get to work when there was snow and ice on the highways.

The claimant arranged for a college student to take her to work on February 11, 2011. The claimant went to the human resource department to find out if she still had a job because she knew she had accumulated too many attendance points. The claimant understood she was discharged because she did not have transportation to get to work and had too many unexcused absences.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Even if the claimant called the employer on February 8, 9 and 10 to report she was unable to work, failing to report to work because she did not have a reliable vehicle amounts to an unexcused absence. The claimant knew when she accepted the job it was her responsibility to get to work on time. The claimant's failure to take reasonable steps to have reliable transportation even during the winter months amounts to a substantial disregard of the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct. As of February 13, 2011, the claimant is not qualified to receive benefits.

DECISION:

The representative's March 18, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct, excessive unexcused absenteeism. The claimant is disqualified from receiving unemployment insurance benefits as of February 13, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css