

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KESHA L LITTLE
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 15A-UI-04146-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/01/15
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed an appeal from the March 27, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 14, 2015. Claimant participated. Employer participated through Kristi Fox, human resources clerk. Employer's Exhibit One was entered and received into the record.

ISSUES:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production worker beginning on February 18, 2013 through December 2, 2014 when she was discharged.

The claimant was placed on leave of absence due to a pregnancy issue on June 24, 2014. She was instructed to provide all of her medical information through health services. She followed all instructions and provided all required medical documentation. She was to be off work until six weeks after she had her baby. The employer discharged the claimant while she was on approved leave of absence even after she provided all of the required documentation to health services. The claimant was notified on December 3 that she had been discharged. She contacted health services to ask them why and was simply told she would have to go through the union.

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.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

The claimant followed all required policies for extending her leave of absence. The employer discharged her while she was still off work pursuant to her treating physician. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because the final absence for which she was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The March 27, 2015 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs