

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA BOERBOON
Claimant

APPEAL NO: 09A-UI-17032-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 11/09/08
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's October 27, 2009 decision (reference 05) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on December 9, 2009. The claimant participated in the hearing. Becky Palmer, a human resource clerk, appeared on the employer's account. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 13, 2009. The claimant worked as a full-time employee. The claimant's probation ended on August 12, 2009. As of August 12, the claimant attendance points were zero. The claimant understood that if she accumulated 14 attendance points in a rolling calendar year, the employer would discharge her.

When the claimant fell at work and hurt her back, her supervisor took her to the employer's nurse. The claimant understood the nurse did not believe this was a work-related injury and indicated the claimant was not eligible for worker's compensation. The claimant's husband took the claimant to the emergency room. Emergency room physicians advised her to go to a worker's compensation doctor. The employer's nurse would not refer the claimant to the employer's worker's compensation physician.

The claimant called in and reported she was taking a personal day on August 17, 18 and 19. She received a point each day. August 24 through 26, the claimant was not at work and received two points for these three days. The claimant received a half point for leaving work early on September 1. She called in on September 2 to report she would not be at work. She received one point for this day. On September 8, the claimant received a half point. The

claimant called in and reported she was sick on September 15, and 16. The claimant called and reported she was taking a personal day on September 16 and 17. The claimant received a point each of these four days. As of September 17, the claimant had accumulated 11 attendance points.

On September 18 the claimant received one point when she did not call or report to work. On September 21 and 22 the claimant notified the employer she was unable to work either because she was ill or there was a personal reason for not reporting to work. As of September 22, the claimant accumulated 14 attendance points. The claimant did not report to work the last five or eight days because of the back pain she experienced after she fell at work. When the claimant reported to work after September 22, she was not allowed to punch in. No one told her why she no longer worked for the employer.

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 section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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).

The claimant's testimony regarding the fall she had work, the resulting back pain and the reasons for her absences must be given more weight than the employer's reliance on attendance records. Since the claimant accumulated 14 attendance points, the employer established business reasons for discharging her. The facts do not, however, establish that the claimant committed work-connected misconduct. Instead, she properly notified the employer she was unable work. The claimant did not work the last five or eight days because of pain she experienced after she fell at work. As of October 4, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's October 27, 2009 decision (reference 05) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected

misconduct. As of October 4, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant in a subsequent benefit year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs