

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YADIRA HERNANDEZ
Claimant

APPEAL NO. 12A-UI-07096-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 05/13/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 5, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 10, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Angie Stevens participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from August 8, 2011, to October 26, 2011. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge for having more than two attendance points in their probationary period. Employees received one point for an unplanned absence and a half point for an unplanned late arrival or early departure from work of less than an hour.

The claimant received a half point each for being late for work on August 23 and September 10. She left work early on September 10 due to illness with permission from her trainer but received a point because she left more than an hour before the end of the shift. She was absent from work on September 26 because she was unable to work due to illness with proper notice to the employer and received one point. She had not received any warnings about her attendance.

On October 25, 2011, the claimant was scheduled to work from 2:30 p.m. to 11:15 p.m. She was working in a production position that required using a knife to cut meat. The production was completed for the day, but there were extra cleaning duties to do. The claimant's shoulder was stiff and painful and she felt she could not work any longer. She looked for a supervisor, but they were all in a meeting. She saw other employees punching out. The claimant punched out at 10:30 p.m. and left the plant.

On October 26, 2011, the employer discharged the claimant for excessive absenteeism during her probationary period.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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 substantial and 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).

The unemployment insurance rules provide that 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.

Nearly all of the claimant's absences were due to legitimate medical reasons and were properly reported. Her final incident involved a legitimate health problem that caused the claimant to be unable to work any longer after production was finished. She attempted to notify a supervisor, but no supervisors were available. She saw other employees punching out. While it would have been more prudent for her to have waited until the supervisors were finished with their meeting or stopping to see the nurse, I conclude this was a good faith error in judgment, not willful misconduct.

DECISION:

The unemployment insurance decision dated June 5, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs