

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAI SAENGKIO

Claimant

APPEAL NO: 09A-UI-03561-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 02/01/09

Claimant: Appellant (4)

Section 96.5-2-a – Discharge

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

Mai Saengkio (claimant) appealed a representative's February 24, 2009 decision (reference 01) that concluded she was not eligible to receive benefits as of January 29, 2009, because she was not able to work because of her pregnancy. The hearing notice also informed the parties the reasons for the claimant's employment separation would be addressed during the hearing. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 1, 2009. The claimant participated in the hearing with her witness, Eric Roberts. Will Sager, the complex 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 enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Is the claimant able to and available for work as of February 1, 2009?

FINDINGS OF FACT:

The claimant started working for the employer on August 20, 2002. The claimant worked as a full-time employee. The claimant understood the employer allowed employees 14 attendance points, but if an employee accumulated 14 or more attendance points within 12 months the employer could discharge the employee. The claimant knew when she was unable to work, the employer required her to notify the employer at least 30 minutes before her scheduled shift.

On November 13, 2008, the claimant notified the employer she was ill and unable to work. After calling in ill on November 13, the claimant had accumulated 14 attendance points within 12 months. On November 15, an assistant human resource manager talked to the claimant. The claimant received a form for her physician to sign because she indicated she thought she had a serious medical condition. On November 18, the claimant arrived at work around 2:30 p.m. to give her supervisor the completed form. The claimant was unable to see or talk to

her supervisor until shortly after 3:00 p.m. The employer concluded the claimant gave the employer late notice that she was unable to work on November 18 and assessed her three points. The doctor's statement the claimant provided allowed the claimant to take Family Medical Leave (FMLA.) The claimant started her leave of absence on November 19, 2009.

On January 26, 2009, the claimant returned to work without any medical restrictions. She worked January 26, 27 and 28. On January 29, 2009, the employer suspended the claimant so management had an opportunity to review her attendance record. On January 30, 2009, the employer discharged the claimant for violating the employer's attendance policy. The claimant accumulated 17 attendance points as of November 18, 2008.

The claimant established a claim for benefits during the week of February 1, 2009. The claimant's baby was born on March 23, 2009. The claimant understands her physician does not want her to work for six weeks after her child was born.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The claimant did not quit her employment. On January 30, 2009, the employer discharged the claimant for violating the employer's attendance policy.

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).

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). 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(8).

The employer established business reasons for discharging the claimant. The evidence does not, however, establish that the claimant intentionally failed to work as scheduled. Her most recent absences occurred because she was unable to work and contrary to the employer's records the claimant attempted to timely notify the employer on November 18 that she was unable to work. Based on the evidence the employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. As of February 1, 2008, the claimant is qualified to receive benefits.

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code section 96.4-3. From March 22 through May 3, 2009, the claimant is not eligible to receive benefits because her physician has restricted her from work for six weeks after the birth

of her child. As of May 3, the claimant should reopen her claim and provide to her local Workforce representative a doctor's statement verifying she can return to work as of that date.

DECISION:

The representative's February 24, 2009 decision (reference 01) is modified in the claimant's favor. First, the employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 1, 2009, the claimant is qualified to receive benefits. The employer's account may be charged for benefits paid to the claimant. The claimant, however, is not eligible to receive benefits March 22 through May 3, because she is not able to work six weeks from the date of her child's birth.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs