

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DEPRICIA A BROWN**  
Claimant

**TYSON FRESH MEATS**  
Employer

**APPEAL 14A-UI-12971-H2T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/16/14**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 9, 2014, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 9, 2014. Claimant participated. Employer did not participate.

**ISSUE:**

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 general production beginning on June 11, 2012 through November 21, 2014 when she was discharged.

The claimant was discharged from employment due to five final incidents of absenteeism that occurred during her last two weeks of work. The claimant entered her last two weeks of work having accumulated attendance points and knew that if she reached ten points she would be discharged. During the week of November 10 through November 14 the claimant missed at least three days of work due to transportation problems with her car. During her last week of employment she missed an additional two days due to ongoing car problems. The claimant missed work solely due to car problems. When she returned to work on November 21 she was told she was discharged for having reached ten attendance points.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as **transportation**, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The evidence establishes that the claimant knew that if she exceeded ten attendance points she could be discharged. The final absence five or sick absences are considered excessive. Benefits are denied.

**DECISION:**

The December 9, 2014 (reference 02) decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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