

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

PAMELA S DEETS
107 NE 5TH ST
LEON IA 50144-1417

OSCEOLA FOODS CORPORATION
C/O JON-JAY ASSOCIATES
PO BOX 182523
COLUMBUS OH 43218-2523

Appeal Number: 06A-UI-04196-JTT
OC: 03/26/06 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absences

STATEMENT OF THE CASE:

Claimant Pamela Deets filed a timely appeal from the April 14, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 3, 2006. Claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Human Resources Manager Judy Callahan represented the employer. The administrative law judge took official notice of the Agency administrative file, including documents the employer submitted for the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Pamela Deets was employed as a full-time production worker from September 25, 2000 until

September 30, 2006, when Human Resources Coordinator Gary Sample discharged her for attendance. There was no other basis for the discharge.

The two absences that prompted the discharge occurred on March 28-29, 2006. On March 28, Ms. Deets notified the employer that she would be absent due to personal problems, but did not provide additional information. On March 29, Ms. Deets notified the employer that she would be absent because she lacked a ride to work.

The employer's attendance policy required Ms. Deets to notify the employer at least 30 minutes prior to the start of her shift if she needed to be absent. In addition to the absences on March 28-29, Ms. Deets was absent for matters other than illness properly reported to the employer on January 24 and August 29, 2005, and on January 10, 2006. Ms. Deets was absent due to illness properly reported to the employer on March 8, April 6, July 12, and December 28, 2005, as well as on February 7-9, 2006.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Deets was discharged for misconduct in connection with the employment. It does not.

Iowa Code section 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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for Ms. Deets' absences to constitute misconduct that would disqualify her from receiving unemployment insurance benefits, the evidence must establish that her *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that the final two absences that prompted the discharge were unexcused because they were for matters of personal responsibility. Accordingly, the evidence provides a "current act" a disqualification for benefits might be based, provided Ms. Deets' total unexcused absences were excessive. However, based on the preponderance of the evidence, the January 10, 2006, absence is the only other absence that would be deemed unexcused under the applicable law. Most of the absences that contributed to the employer's discipline of Ms. Deets and decision to discharge Ms. Deets were *excused* absences under the applicable law. Many of those absences were for illness properly reported to the employer. Two other absences were for what Ms. Deets identified as emergency situations. The evidence indicates the employer did not question the legitimacy of the "emergency" circumstances and did not document any details regarding the "emergencies."

The evidence in the record fails to support a conclusion that Ms. Deets was discharged for misconduct based on excessive unexcused absences. See 871 IAC 24.32(7). The administrative law judge concludes that Ms. Deets was discharged for no disqualifying reason. Ms. Deets is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Deets.

DECISION:

The Agency representative's decision dated April 14, 2006, reference 01, is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

jt/kkf