

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDICE A MCGEE
Claimant

APPEAL NO. 07A-UI-08679-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 08/12/07 R: 03
Claimant: Appellant (5)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Candice McGee, filed an appeal from a decision dated September 6, 2007, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on September 26, 2007. The claimant participated on her own behalf. The employer, Tyson Fresh Meats, did not provide a telephone number where a representative could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Candice McGee was employed by Tyson Fresh Meats from July 2 until 26, 2007, as a full-time production worker. She attended orientation where she was informed that three absences during the probationary period is grounds for discharge.

Ms. McGee missed three days of work due to transportation problems. The last occurrence was July 25, 2007, and she called the employer on July 26, 2007, to ask if she still had a job. The person with whom she spoke verified she had three absences and told her she no longer had a job.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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 claimant had been advised that three absences during the probationary period was grounds for discharge. She missed three work days out of 17 due to lack of transportation. Matters of purely personal consideration, such as lack of transportation, are not considered an excused absence. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). This many absences in such a short period of employment is clearly excessive. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of September 6, 2007, reference 01, is modified without effect. The claimant was discharged for job-related misconduct and she is disqualified. Benefits are

withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs