

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VIOLA CASTANEDA
Claimant

APPEAL NO: 06A-UI-08497-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 07/23/06 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Viola Castaneda (claimant) appealed a representative's August 14, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 11, 2006. The claimant participated in the hearing. The employer responded to the hearing, but was not available for the hearing. A message was left for the employer to contact the Appeals Section immediately to participate in the hearing. The employer did not respond to the message left on the witness's answering machine. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2005. The claimant understood the employer had an attendance policy and employees could be discharged if they accumulated too many points.

The claimant started having an attendance problem in late December 2005 or January 2006 because of complications with her pregnancy. Every time the claimant was unable to work as scheduled, she contacted the employer and brought the employer a doctor's statement. Sometimes her supervisor accepted the doctor's statement, and sometimes he would not.

In May and June, the claimant was in and out of the hospital. In early June, the claimant was in the hospital for about a week because of complications with her pregnancy. After the claimant was released, she was involved in a car accident. The claimant was then hospitalized two more days.

After the claimant was released from the hospital after her accident, she received a notice from the employer. The notice informed the claimant she had been terminated. Although the claimant did not understand why the employer discharged her, she did not contact the employer to find out the reason for her discharge.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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). For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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).

The facts establish the employer discharged the claimant for excessive absenteeism. Although the claimant did not have specific dates she was hospitalized, a preponderance of the evidence indicates the claimant was unable to work a period of time. Because the employer did not participate in the hearing, the evidence does not establish that the claimant committed work-connected misconduct. Based on the evidence presented during the hearing, the claimant is qualified to receive unemployment insurance benefits as of July 23, 2006.

DECISION:

The representative's August 14, 2006 decision (reference 01) is reversed. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of July 23,

2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw