

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANABELL A ALFARO
Claimant

APPEAL NO. 07A-UI-05003-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 04-22-07 R: 01
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 9, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 5, 2007. The claimant did participate through the interpretation of Susana Jaquez. The employer did participate through Will Sager, Complex Human Resources Manager.

ISSUE:

Was the claimant discharged for work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production worker full time beginning January 25, 2005 through April 17, 2007, when she was discharged.

On April 13, 2007, the claimant called in sick to work at 3:18 p.m. The claimant was not ill or sick when she called in but was incarcerated. The employer's policy requires that employees present an honest reason for their absence when calling in absent to work. The claimant provided false information about why she was absent from work.

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.

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.

The claimant owed it to her employer to provide an honest reason as to why she was absent. The claimant lied to the employer and indicated she could not come to work because she was ill or sick, when in fact she was incarcerated and unable to come to work. The claimant's choice to lie, even if an interpreter advised her to do so, was still her choice; and she is responsible for her own choices and actions. The claimant's actions, that is lying about her reason for absence, is misconduct sufficient to disqualify her from receiving unemployment insurance benefits.

DECISION:

The May 9, 2007, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw