

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LYDIA S HELLER**

Claimant

**APPEAL NO. 07A-UI-02079-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEEF PRODUCTS INC**

Employer

**OC: 01/28/07 R: 04  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Beef Products, Inc. filed an appeal from a representative's decision dated February 19, 2007, reference 01, which held that no disqualification would be imposed regarding Lydia Heller's separation from employment. After due notice was issued, a hearing was held by telephone on March 15, 2007. Ms. Heller participated personally. The employer participated by Rick Wood, Human Resources Manager, and Jennifer Stubbs, Human Resources Benefits Supervisor. Exhibits 1 through 13 were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Heller was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Heller was employed by Beef Products, Inc. from May 26, 2005 until January 28, 2007 as a full-time laborer. She was discharged due to her attendance. An individual is subject to discharge if she accumulates more than 14 attendance points over a rolling 12-month period.

The absences that caused Ms. Heller's discharge occurred between January 28, 2006 and January 28, 2007. With the exception of March 20 and June 10, 2006, all absences were properly reported. She called after the start of her shift to report her absence of March 20 and had someone else call in for her on June 10. Ms. Heller's absence of March 20 was due to illness but she overslept and did not timely report the absence. All of her remaining absences were due to either her own illness or that of a family member. Ms. Heller had received warnings regarding her attendance and where she stood with attendance points.

The final absence that prompted the discharge occurred on January 28, 2007. Ms. Heller was on her way to work when the transmission went out in her vehicle approximately five miles outside her home in Oelwein. She was still approximately 25 miles from work. She was able to arrange a ride with a coworker the following day. The next most prior countable absence was on December 18, 2006, when Ms. Heller was absent due to illness. Attendance was the sole reason for the discharge.

## REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

Ms. Heller's absence of March 20, 2006 is unexcused because it was not timely reported to the employer. Her remaining absences are excused, as they were all for reasonable cause and were all reported prior to the start of her shift. The final absence that triggered the discharge was due to car problems. Ordinarily, absences due to matters of personal responsibility, such as transportation, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). However, Ms. Heller did not have a history of missing work or reporting to work late because of transportation issues. She could not have predicted that her transmission would fail on January 28. Given the fact that she did not have a history of transportation problems and given the unexpected nature of what occurred on January 28, the administrative law judge concludes that the absence should be excused.

In order to support a disqualification from benefits, the evidence must establish a current act of misconduct. See 871 IAC 24.32(8). The evidence establishes only one unexcused absence on Ms. Heller's record, that of March 20, 2006. An absence that occurred on March 20, 2006 would not be a current act in relation to the January 28, 2007 discharge date. Even if the administrative law judge were to conclude that the absence of June 10, 2006 should be unexcused because it was reported by someone other than Ms. Heller, it still would not represent a current act of misconduct.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to establish disqualifying misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed,

## DECISION:

The representative's decision dated February 19, 2007, reference 01, is hereby affirmed. Ms. Heller was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw