IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MARIA DELEON Claimant **TYSON FRESH MEATS INC** Employer	**APPEAL 16A-UI-00385-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 12/06/15** **Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 29, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 1, 2016. Claimant participated through interpreter, Ike Rocha. Employer participated through human resource clerk, Shannon Wehr.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production worker from September 26, 2006, and was separated from employment on December 10, 2015, when she was discharged.

The employer has an attendance policy which applies point values to attendance infractions. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving ten points in a rolling twelve-month period. Claimant was made aware of the employer's policy during orientation.

On November 6, 2015, claimant last worked for the employer. After November 6, 2015, claimant was a no-call/no-show on November 11, 12, 13, and 14, 2015. On November 16, 17, 18, and 19, 2015, claimant called in sick. On November 21 and 23, 2015, claimant was a no-call/no-show. On November 24 and 25, 2015, claimant called in sick. On November 27 and 28, 2015, claimant was a no-call/no-show. On November 30, 2015, claimant called in sick. From December 1 through 3, claimant called in sick. On December 4 and 5, claimant was a no-call/no-show. The final incident occurred when claimant was a no-call/no-show on December 8, 2015 to her shift. These absences (after November 6, 2015) accounted for forty points. Claimant was not on Family and Medical Leave Act (FMLA) leave or a leave of absence. For the days claimant called in sick, she did follow the call-in procedure, but not for the other days. If claimant calls in late, it is labeled as a late call. If an employee is on

approved vacation, they get a piece of paper, but it is also documented in the system. There was nothing documented in the system about claimant being on vacation.

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. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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.

Iowa Admin. Code r. 871-24.32(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be **properly reported** in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982) (Emphasis added).

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. Although the employer was not able to provide evidence that claimant was warned after November 6, 2015, regarding her absenteeism, claimant had eleven no-call/no-shows from November 6, 2015, until she was discharged. During that time, claimant was also absent ten times and followed the employer's proper call in procedure. Although these ten absences are considered excused because she properly reported them, the absences do show that claimant was well aware of how to report her absences. Eleven no-call/no-shows in approximately a one-month time period is considered excessive, even without a prior warning. Claimant's final absence, in combination with her history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The December 29, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. 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.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

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