

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGRET G AKOL
Claimant

APPEAL NO: 12A-UI-15004-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 11/11/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 14, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing. The employer's witness did not contact the Appeals Section again to participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in September 2010. She worked full time. The claimant knew the employer had an attendance policy and she could be discharged if she accumulated 14 or more attendance points. The claimant understood that if she was absent, she had to contact the employer before her scheduled shift. The claimant started work at 3:45 p.m.

The claimant is a single mother with children. Many of her absences occurred when she was sick or a child was sick. The claimant gave the employer doctor's notes when she was absent.

On November 8, her son became sick at school. The school called the claimant at 2:30 p.m. for her to pick up her son. By the time the claimant got home, it was 4 p.m. and too late to call the employer. The claimant did not feel well the next day and did not call or report to work. The employer gave her three attendance points on November 8 and 9.

When the claimant went to work on November 12, the employer sent her home to investigate her absences. On November 14, 2012, the employer discharged the claimant for having too many attendance points. The claimant does not recall receiving any warnings that her job was in jeopardy for attendance issues before she was discharged.

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 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 evidence indicates the claimant's most recent absences and many of her other absences occurred because either she was sick or one of her children was sick. When she or a child was ill, she gave the employer a doctor's note. The claimant understood she had to contact the employer before her scheduled shift when she was unable to work as scheduled. On November 8, the claimant planned to work until she received a call from her child's school that the child was ill and she needed to pick up her child. By the time the claimant returned home with her sick child, it was after 3:45 p.m. On November 9, the claimant was ill and was unable to contact the employer before 3:45 p.m. Based on the claimant's understanding of the employer's attendance policy and the reasons for her most recent absences, the claimant did not commit work-connected misconduct. As of November 11, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's December 14, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons because she accumulated too many attendance points. The claimant did not commit work-connected misconduct. As of November 11, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs