

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALALIZA L DIZON**  
Claimant

**APPEAL NO. 08A-UI-10591-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 03/09/08 R: 01  
Claimant: Respondent (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Tyson Fresh Meats, Inc. (employer) appealed a representative's October 30, 2008 decision (reference 02) that concluded Analiza L. Dizon (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 1, 2008. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Susan Pfeifer, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 on September 5, 2006. The claimant worked as a full-time trimmer on the A shift. The claimant received information that if she accumulated 14 points within 12 months, the employer would discharge her for violating the employer's attendance policy.

Prior to September 26, 2008 the employer informed the claimant she had accumulated 10.5 attendance points and reminded her that her job was in jeopardy for on-going attendance issues. The claimant worked as scheduled on September 26. She was scheduled to work on S September 29, 30 and October 1. On September 29 and 30, the claimant contacted the employer to report she was ill and unable to work as scheduled. On October 1, the claimant did not call or report to work as scheduled.

On October 2, the claimant came to work and asked if she still had a job. The employer asked the claimant to come back the next day. The employer wanted an opportunity to review her

attendance record. As of October 2, the claimant had accumulated 14.5 attendance points. The employer gave her a point for being ill on September 29 and 30. The claimant received three points for failing to call or report to work on October 1, 2008. When the claimant talked to the employer, she explained she had not been ill on September 29 and 30. Instead, she was looking for a house to move to because she had problems with her husband. The employer did not know why the claimant did not call on October 1. On October 3, the employer discharged the claimant because she violated the employer's attendance policy by accumulating more than 14 points within a year.

**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. 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 claimant knew or should have known her job was in jeopardy. If the claimant would have called the employer on October 1, she would have accumulated less than 14 points and the employer would not have discharged her on October 3. The claimant's failure to properly notify the employer to report she was unable to work as scheduled on October 1 when her job was in jeopardy amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for work-connected misconduct. As of October 5, 2008, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's October 30, 2008 decision (reference 02) is reversed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as if October 5, 2008. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css