

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY A WILCOX
Claimant

APPEAL NO: 11A-UI-14458-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 01/30/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 3, 2011 determination (reference 14) that disqualified her from receiving benefit and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Gwen Timberman, the senior human resource clerk, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 employer hired the claimant as a full-time production employee on July 11, 2011. The employer's attendance policy informs employees they will not be retained as an employee if they accrue 3.5 points during their probation.

The claimant received three attendance points for an August 5 absence. Since no one in management or the human resource department talked to the claimant or gave her a warning that her job was in jeopardy when she accumulated the three points, the employer did not include the August 5 absence when deciding the claimant violated the employer's attendance policy during her probation.

The claimant called in sick on September 16 and 23. The claimant was unable to work these days because she had to take care of issues involving her children who lived with their father in Cedar Rapids. On September 28 the claimant called in and was unable to work because she had injured herself outside of work. The claimant gave the employer a doctor's note verifying she had an injury on September 28 and was unable to work. The claimant called in sick on October 6.

On October 7, the employer gave the claimant a warning that she had accumulated more than 3.5 attendance points during her probation. On October 11, the employer discharged the claimant for unsatisfactory attendance during her probation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant 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 employer established business reasons for discharging the claimant. During her probation the claimant did not establish that she was a reliable and dependable employee. The facts do not show that when the claimant was absent she intentionally disregarded the employer's interests. She was absent when her children needed her or she was unable to work because of an injury or illness. The claimant did not commit work-connected misconduct.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's November 3, 2011 determination (reference 14) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of October 9, 2011, the claimant is qualified to receive benefits. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs