

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELSIE V SICAN
Claimant

APPEAL NO: 12A-UI-14399-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 11/04/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 30, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments and the law, the administrative law judge concludes the claimant is 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 June 2009. She worked full time. The claimant understood the employer could discharge an employee for violating the employer's attendance policy by accumulating more than nine attendance points in a rolling calendar year. The employer assessed an employee two points if the employee did not call or report to work. An employer assessed an attendance point each day an employee was ill and unable to work even when a doctor verified an employee could not work.

Prior to October 29, 2012, the claimant had not received any warnings about her attendance. The claimant received nine attendance points for health reasons. She gave the employer a doctor's statement for her absences with the exception of April 18, 19 and 20.

On October 25, the claimant became sick at work. After she vomited, she saw the employer's nurse. The employer's nurse sent the claimant home early.

The employer assessed the claimant an attendance point for leaving work early on October 25. This gave the claimant ten attendance points. On October 29, the employer discharged the claimant for violating the employer's attendance policy or accumulating more than nine attendance points.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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 employer followed its attendance policy and discharged the claimant for accumulating too many attendance points. While the employer may have justifiable business reasons for discharging the claimant, the claimant did not commit work-connected misconduct. Her absences occurred because she was ill and unable to work. The most recent absence occurred after the employer sent her home when she became sick at work. As of November 4, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's November 30, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of November 4, 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/tll