

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ESTHER NDUMBA**

Claimant

**APPEAL NO: 18A-UI-01121-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 12/17/17**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 19, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 19, 2018. The claimant participated in the hearing with CTS Language Link Interpreter Oland (10597). Catheleena Mayes, Human Resources Associate Administrator, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Tyson Fresh Meats from May 16, 2016 to December 6, 2017. She was discharged for exceeding the allowed number of attendance points.

The employer has a no-fault attendance policy and an employee may be terminated if she reaches 10 points. Employees receive one attendance point for a full day absence and one-half point for an incident of tardiness. Five consecutive days absent accompanied by a doctor's note receive one point. A no-call/no-show is assessed three points. Written warnings are issued at three and six points.

The claimant was tardy and received one-half point September 26, 2016; she was absent due to illness and received one point each November 11, December 19, December 21 and December 22, 2016; she was tardy and received one-half point December 27, 2016; she was tardy and received one-half point January 10, 2017; she was a late call and was considered a no-call/no-show and received three points each August 2, 2017 and October 5, 2017; she was absent due to illness and received one point each November 15, 16 and 17, 2017; she was a late call and was considered a no-call/no-show and received three points each November 21 and November 22, 2017; she was absent due to illness and received one point November 30, 2017; she was absent due to illness and received one point December 2, 2017, and her

employment was terminated December 6, 2017. The claimant was issued a second written warning August 2, 2017. The employer does not have a record of her first written warning.

The claimant had surgery November 2, 2017, and was placed on light duty. She went to work November 15, 16 and 17, 2017, but the employer sent her home because it did not believe she could perform her job at that time. On December 2, 2017, the employer told the claimant she needed to provide a doctor's note regarding her lifting restrictions. The claimant provided the note to the employer December 4, 2017.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

While the claimant did accumulate 22.50 points all but one and one-half of her points were due to illness. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

**DECISION:**

The January 19, 2018, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn