

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENELL Y IRVING
Claimant

APPEAL NO: 06A-UI-08074-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 07/02/06 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Jenell Y. Irving (claimant) appealed a representative's August 4, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 29, 2006. 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. Jerome Rinken, a supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment without good cause or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 27, 2005. The claimant worked as a full-time, night-shift employee. The claimant was on an authorized leave of absence March 27 through April 26, 2006. The claimant returned to work as scheduled on April 27, 2006.

The claimant was then scheduled to work but called and reported she was ill and unable to work May 2 through June 1, 2006. On May 23, the employer sent the claimant a certified letter indicating she was required to submit medical documentation by May 30, 2006, for the employer to excuse her absences or again put her on a leave of absence. The letter further indicated that if the claimant did not provide the requested medical information by May 30, she would not be employed because of excessive unexcused absenteeism.. The claimant received the certified letter. The claimant did not provide any medical documentation or contact the employer about the May 23 letter. The claimant did not return to work or contact the employer after June 1,

2006. As of June 1, 2006, the employer no longer considered the claimant an employee because of her excessive unexcused absences.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 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 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 presented at the hearing, indicates the claimant did not voluntarily quit her employment. If the claimant had quit, she would not have called the employer every day she was scheduled to work May 2 through June 1, 2006. The employer initiated the employment separation and discharged the claimant as of June 1, 2006.

Since the claimant did not participate in the hearing, it is not known why she did not respond to the employer's May 23 certified letter. The facts also do not indicate why she did not provide the employer with requested documentation by May 30, 2006. Based on a preponderance of the evidence presented during the hearing, the claimant had excessive unexcused absences the last month of her employment. The employer discharged her for reasons constituting work-connected misconduct. As of July 2, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 4, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is

disqualified from receiving unemployment insurance benefits as of July 2, 2006. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs