

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEASA M DOTY

Claimant

APPEAL NO: 09A-UI-00949-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

**OC: 12/28/08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Leasa M. Doty (claimant) appealed a representative's January 20, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Cargill Meat Solutions Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 9, 2009. The claimant participated in the hearing. Alicia Alonzo 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 4, 2008. She worked full time as a production worker on the cut floor in the employer's Ottumwa, Iowa meat processing facility. She worked on the second shift, with a start time of 2:30 p.m.; she lived approximately 30 miles away from the facility. Her last day of work was December 23, 2008. The employer discharged her on that date. The reason asserted for the discharge was excessive absenteeism.

The employer has a ten-point attendance policy. Under this policy, by October 15, 2008 the claimant had already incurred nine points, virtually all of which were due to various personal issues, some of which were transportation related, but none of them were due to personal medical issues. As a result, she had been given warnings on September 15, September 22, and October 15. She had an additional occurrence covering three days, December 3, December 5, and December 6; this was due to personal illness. The employer did assess her a tenth point as a result of this incident, but rather than discharging her, on December 8 allowed her to enter into a "last chance" agreement in which she agreed not to have any further incidents for several months.

On December 22 the claimant was again absent. Shortly before it was time for her to leave for work she discovered that one of her car's tires was near flat. There was no nearby place for her to put air into the tire. As a result, she did not attempt to drive to work, but rather called in an absence for the day. When she returned to work on December 23, she was discharged for this final absence after her "last chance" agreement.

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). Absences due to issues that are of purely personal responsibility, specifically including transportation issues, are not excusable. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984); Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The claimant's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had a history of multiple unexcused absences and had previously been warned that future absences could result in termination. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's January 20, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving

unemployment insurance benefits as of December 23, 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs