

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SYLENA NIEVES**  
Claimant

**APPEAL NO: 07A-UI-07505-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**OC: 07-01-07 R: 03  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 23, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 21, 2007. The claimant participated in the hearing. Melissa Skinner, Assistant Human Resource Manager, 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 Cargill Meat Solutions from October 19, 2006 to June 20, 2007. The employer uses a no-fault attendance policy and employees receive a verbal warning upon reaching five points; a first written warning upon reaching eight points; a second written warning upon reaching nine points; and are terminated upon reaching ten points. The claimant received a verbal warning February 27, 2007, for accumulating five points; a first written warning March 22, 2007, for accumulating eight points; a second written warning March 23, 2007, for accumulating nine points; and accumulated her tenth point March 28, 2007. On May 9, 2007, the employer placed the claimant on a last chance agreement which stated she could not miss any more days the rest of the year without the permission of her supervisor or her employment would be terminated. The claimant requested June 8, 2007, off work and then suffered a house fire June 16, 2007, causing her to miss work June 18, 19 and 20, 2007, and the employer terminated her employment for violating its attendance policy.

**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:

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 individual shall be disqualified for benefits 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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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). While the claimant did violate the attendance policy, her last absence was due to a house fire and it is understandable that she could not ask for time off ahead of time and needed to miss work June 18, 19 and 20, 2007. Because the claimant's last absence was due to circumstances beyond her control that required her personal attention, the administrative law judge concludes her absenteeism does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The July 23, 2007, reference 01, decision is affirmed. 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/pjs