

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA K ROBERTSON**

Claimant

**APPEAL NO. 08A-UI-00439-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**OC: 12/09/07 R: 03  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Cargill, filed an appeal from a decision dated January 2, 2008, reference 02. The decision allowed benefits to the claimant, Linda Robertson. After due notice was issued a hearing was held by telephone conference call on February 2, 2008. The claimant participated on her own behalf. The employer participated by Assistant Human Resources Director Lauri Elliott.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Linda Robertson was employed by Cargill from October 7, 1996 until December 14, 2007, as a full-time production worker on the 5:45 a.m. until 2:15 p.m. shift. The employer's attendance policy is based on a point system where employees have ten points to use in a rolling 12-month period. When the tenth point is received the employee is subject to discharge.

The claimant received warnings as specified under the progressive disciplinary policy when she reached certain point levels. A verbal warning was given on December 19, 2006 and a written warning on September 29, 2007, when she had used eight points. Ms. Robertson mistakenly believed she had gained a point back in November 2007, but this was incorrect. She was absent on December 11, 2007, because an ice storm had caused her to lose power and her garage door was frozen shut. Later that day she had a friend from Centerville come get her and take her to his home. The next day she did not come to work because she was in Centerville and thought she had more points than she did and could afford to be absent that day.

The employer assessed her point total and she was discharged on December 14, 2007, as she had used all of her available points. The human resources manager notified her and, at the claimant's request, they went over her attendance records. The records Ms. Robertson kept

herself about her attendance were incorrect and she had not gained back a point in November 2007, and had used all of her points with the absence on December 12, 2007.

Linda Robertson has received unemployment benefits since filing a claim with an effective date of December 9, 2007.

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

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.

871 IAC 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.

The claimant was aware of the employer's attendance policy and kept records of her own regarding the days she had missed. Due to an error in her own record keeping she thought she had more points available to her than she actually had when she elected not to come to work on December 12, 2007. Her claim that the roads were still icy on that date may be correct, but if her friend was able to drive from Centerville to Ottumwa and back again to pick her up, there is no logical reason why the friend could not have taken her to work the next day just as easily.

Her decision to be absent from work was not based on the road condition but the belief she had more points than she actually did and could afford to miss work again without jeopardizing her job.

The final absence must be considered unexcused because it was not due to weather or lack of transportation, but a decision not to come to work. This is a final occurrence of unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of January 2, 2008, reference 02, is reversed. Linda Robertson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,468.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs