

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA E GONZALEZ
Claimant

APPEAL NO. 13A-UI-04760-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/24/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 12, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on June 17, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Mary Hamilton, attorney at law. Will Sager participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from June 12, 2001, to March 27, 2013. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge for accumulating 14 attendance points.

She was absent on November 5, 2012, and February 18, 2013, because she was sick and unable to work. She was absent January 16 and 17, February 26, and March 11 and 12, 2013, because her child was sick. She was late for work on February 11 and 22 and March 6, 2013. She was absent from work without notice to the employer on January 30, but called in to report her absences on all the other days she was absent.

The claimant was sick and unable to work on March 22, 2013, which put her at 14.5 attendance points. She called in properly to report her absence.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

No willful and substantial misconduct has been proven in this case. The claimant's final absences were all for legitimate illness and were properly reported.

DECISION:

The unemployment insurance decision dated April 12, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise qualified.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs