

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERICA N TURNER**  
Claimant

**APPEAL NO. 13A-UI-10977-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 08/25/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated September 17, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on October 23, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Kristi Fox participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a production worker for the employer from August 27, 2012, to August 9, 2013. She 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 if they received 10 attendance points in a 12-month period. She was warned on June 28, 2013, because she had 9 attendance points, which were all due to illness and were properly reported.

The claimant was absent due to illness from July 9 to August 6, 2013. She called in properly and reported she was sick each day. She brought in a note from a nurse on July 17 that excused her from working July 15 to 18. While she was at the plant, she was examined by the company doctor because she was also having problems with her arms. The company doctor told the claimant that she should see a doctor to obtain a release to return to work. The claimant told the company doctor that the earliest she could get an appointment was August 6.

On August 2, the claimant received a letter requiring her to bring in a doctor's note by August 5 or be terminated. She visited the company doctor on August 5 and she explained about having a doctor's appointment with her regular doctor the next day. She was told that she did not need to worry about the August 2 letter and should bring in her doctor's release the next day. The claimant supplied a doctor's note to the employer on August 6 that released her to return to work.

The claimant worked on August 7, 8, and 9, and was discharged at the end of her shift on August 9 for having 25 attendance points.

**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 section 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). The claimant's absences were due to illness and were properly reported. No willful and substantial misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated September 17, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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