

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FAYE M TEDROW
Claimant

APPEAL NO. 07A-UI-06879-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

**OC: 06/17/07 R: 03
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (Cargill) filed an appeal from a representative's decision dated July 2, 2007, reference 01, which held that no disqualification would be imposed regarding Faye Tedrow's separation from employment. After due notice was issued, a hearing was held by telephone on July 31, 2007. Ms. Tedrow participated personally. The employer participated by Melissa Skinner, Assistant Human Resources Manager. Exhibits One through Eight were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Tedrow was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Tedrow was employed by Cargill from September 14, 2006 until June 18, 2007 as a full-time production worker. She was discharged because of her attendance. An individual is subject to discharge when she accumulates ten or more attendance points.

Ms. Tedrow's husband was also a Cargill employee. He collapsed at work on June 12 and had to leave. Due to a respiratory condition, he had to receive treatment at the University of Iowa Hospital. Ms. Tedrow properly reported the intent to be absent June 13, 14, and 15. She was absent those days because she was taking her husband for medical treatment. The absences caused her to exceed the employer's attendance standards and, therefore, she was discharged on June 18, 2007.

The bulk of Ms. Tedrow's remaining absences were due to illness or injury. She was absent for personal business on December 28, 2006 and February 15 and March 27, 2007. She was absent for unknown reasons on January 17, 2007. Ms. Tedrow had received written warnings concerning her attendance. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. The administrative law judge is not bound by an employer's designation of an absence as unexcused.

There must be a current act of misconduct to support a disqualification from job insurance benefits. See 871 IAC 24.32(8). Ms. Tedrow's final absences were caused by the need to obtain medical treatment for her husband, who had collapsed while working for Cargill on June 12. The employer was properly notified of the absences. For the above reasons, the administrative law judge considers the absences of June 13, 14, and 15 to be excused. The next most prior absence that was not due to illness or injury was March 27, 2007 when Ms. Tedrow was absent due to personal business. The absence is unexcused as it was due to a personal matter. However, an unexcused absence that occurred on March 27 would not constitute a current act in relation to a discharge that occurred on June 18.

The administrative law judge concludes that Ms. Tedrow's discharge was not based on a current act that constituted misconduct within the meaning of the law. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated July 2, 2007, reference 01, is hereby affirmed. Ms. Tedrow was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css