

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY L LEMAY
Claimant

APPEAL NO. 07A-UI-02542-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 02/11/07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tracy L. LeMay filed a timely appeal from an unemployment insurance decision dated March 7, 2007, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held March 28, 2007, with Ms. LeMay participating. Production Supervisor Jerome Rankin participated for the employer, Tyson Fresh Meats, Inc. .

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Tracy L. LeMay was a production worker for Tyson Fresh Meats, Inc., from March 1, 2005, until she was discharged February 12, 2007, because of poor attendance. Ms. LeMay was tardy on February 6, 2007, because of transportation problems. She was absent without contact on January 11, 2007, and tardy on January 6, 2007. She was tardy also on October 24, 2006, and was tardy due to oversleeping on August 31, 2006. Ms. LeMay received periodic warnings concerning her attendance. She was also absent on several occasions because of personal or family illness. These absences were properly reported to the employer.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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.

Excessive unexcused absenteeism, a concept which includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to illness is not held against an employee for unemployment insurance purposes if the absence is properly reported to the employer. See 871 IAC 24.32(7).

Even leaving out the absence due to personal and family illness, the evidence in this record establishes five unexcused absences between August 31, 2006, and February 6, 2007, accompanied by warnings. The administrative law judge concludes that the evidence is sufficient to establish excessive unexcused absenteeism. Benefits are withheld.

DECISION:

The unemployment insurance decision dated March 7, 2007, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw