

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNNE A ZELHOFER
Claimant

APPEAL NO: 19A-UI-04116-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 04/14/19
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's unemployment insurance decision dated May 8, 2019, (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged from work on April 17, 2019 for excessive unexcused absenteeism. After due notice was provided, a telephone hearing was held on June 13, 2019. Claimant participated. Employer participated by Ms. Mehdina Kurtovic, Human Resource Administrative Assistant. The administrative file was marked as Department Exhibit 1 and received into the hearing record.

ISSUE:

The issue is whether the evidence in the record establishes work-related misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the testimony of the witnesses and the evidence in the record, the administrative law judge finds: Lynne Zellhoefer was employed by Tyson Fresh Meats, Inc. from April 3, 2017 until April 17, 2019 when she was discharged from employment. Ms. Zellhoefer worked as a full-time maintenance worker and was normally scheduled to work four nights per week on a rotating schedule. The claimant was discharged after she had exceeded the permissible number of attendance infraction points allowed under the company's no-fault attendance policy, when she failed to report for an additional work-shift on April 11, 2019.

Ms. Zellhoefer was unaware that the company had scheduled a mandatory fifth work shift that week because Ms. Zellhoefer had called off work on Tuesday, April 10, 2019 and the required notice of the mandatory fifth shift that week had not been posted in advance of the fifth work shift to provide notice to the claimant. Ms. Zellhoefer, at a later time, learned that the employer had announced the mandatory fifth shift shortly before midnight on the night of April 10, 2019. Because the employer had not properly posted notice of the over-time shift as required and had not notified Ms. Zellhoefer within the required number of hours in advance of the mandatory work shift, Ms. Zellhoefer was unaware that she was expected to report for work on April 11, 2019.

Under the terms of the employer's no-fault attendance policy, employees are subject to discharge if they accumulate ten attendance infraction points within a rolling one year period. Employees are assessed one infraction point for each absence that has not been previously excused, reporting late, and leaving early, result in a partial point and failure to report or notify the employer of the impending absence results in three points being assessed. Ms. Zellhoefer was at 7 ½ points before missing the April 11, 2019 shift. The assessment of three additional infraction points caused Ms. Zellhoefer to exceed the permissible number of infraction points and resulted in her discharge from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional disqualifying work-connected misconduct on the part of the claimant sufficient to warrant the denial of job insurance benefits. It does not.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(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.

In order for a claimant's absence to constitute misconduct that will disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absence related to issues of personal responsibility such as transportation or over-sleeping are considered unexcused. Absences related to illness are considered excused provided the employee has complied with the employer's policy regarding notifying the employer of the absence.

The evidence in the record establishes that Ms. Zellhoefer did not report for work or notify the employer of her impending absence on the night of April 11, 2019 because she was unaware that she was expected to report for a mandatory fifth shift that week.

Ms. Zellhoefer testified that she was absent from work on the preceding night after properly calling off work and that notice for a mandatory fifth shift that week had not been posted as required and that she had not received other notification from either the employer or other workers that she was expected to report for work on the evening of April 11, 2019. The claimant was assessed three additional infraction points because the employer considered her absence to be unexcused, and that she had failed to notify the employer, she exceeded the permissible number of attendance infractions and was discharged.

Ms. Zellhoefer testified that she did not intentionally miss work, but missed because she was unaware that work had been scheduled. There being no evidence of equal weight to the contrary, the administrative law judge concludes that the evidence in the record does not establish intentional disqualifying misconduct on the part of the claimant.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that Ms. Zellhoefer was discharged under non-disqualifying conditions. Accordingly, the claimant is eligible to receive unemployment insurance benefits, provided that she meets all other eligibility requirements of Iowa law.

DECISION:

The representative's unemployment insurance decision dated May 8, 2019, reference 01 is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn