

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARMIN Y HARRIS**  
Claimant

**APPEAL NO. 10A-UI-00577-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**Original Claim: 11/22/09  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated January 5, 2010, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on February 24, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Will Sager participated in the hearing on behalf of the employer. The record was left open for the claimant to present proof of his contacts with the employer's health services department. He sent in sheets for November 13, 17, 18 and an electrocardiogram for November 16. These documents were marked as Exhibit A and were sent to the employer for objections. No objections were received. Exhibit A is admitted into evidence.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as a production worker from January 15, 2009, to November 20, 2009. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer 30 minutes before the start of their shift if they were not able to work as scheduled and were subject to discharge after receiving 14 attendance points. Employees absent for illness with proper notice receive one point but without proper notice receive three points.

The claimant was at 13.5 points as of September 25, 2009. He had received warning about his attendance prior to that time. The claimant received one point on October 26 for a properly reported absence.

The claimant was scheduled to work at 3:00 p.m. on November 13. Earlier that day, the claimant had experienced some chest pains. He decided to go to the emergency room. He went to the hospital at 2:00 p.m. The emergency room doctor advised to make an appointment with his personal doctor. The claimant notified the employer at 4:00 p.m. that he would not be at work, for which he received three points for late notification. He also called in late to report that he would not be at work on November 14 and received three points.

The claimant had an appointment to see his doctor on the afternoon of November 16. His doctor prepared a statement excusing him from working from November 13 to 16 and releasing him to return to

work on November 17. The claimant did not call the employer to notify the employer that he would not be at work that day. He was given three points for being absent without notice.

The claimant still did not feel well and called in properly on November 17 to notify the employer that he would not be at work. He received one point. The claimant called in on November 18 to report he was not able to work. He was told by Nicole in human resources to come in at 4:30 p.m. When he reported to work and provided his doctor's note for November 13 to 16, Nicole told him to come back on November 19. He returned on November 19, but was again told to come back on November 20. On November 20, he was notified that he had exceeded the 14 points and was discharged.

#### **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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof.

Even if you believe the claimant's testimony that he called in on November 18 and reported to work at 4:30 p.m. as instructed that day, he was discharged for excessive unexcused absenteeism. He called in late on November 13 and 14 and did not call in on November 16. Even if the claimant had an excuse for missing work, he has not provided an legitimate reason for not properly notifying the employer about his absences. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

#### **DECISION:**

The unemployment insurance decision dated January 5, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw