

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

FATUMA M DUBOW
Claimant

APPEAL NO: 18A-UI-07464-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY LLC
Employer

OC: 06/10/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 2, 2018, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 31, 2018. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Laura Roney, Payroll/Human Resources Assistant, participated in the hearing on behalf of the employer. Employer's Exhibits 1 through 5 were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general laborer for Agri Star Meat & Poultry from September 19, 2017 to June 12, 2018. She was discharged for exceeding the allowed number of attendance points.

The employer's attendance policy is a no-fault, point based policy and employees receive one-half point for an incident of tardiness or leaving early; one point for a full day absence; and two points for a no-call/no-show absence. Consecutive days absent accompanied by a doctor's note results in one point. An employee receives a verbal warning in writing as close to the time as she accumulates three attendance points as possible; a written warning as close to the time as she accumulates six attendance points as possible; a three day suspension as close to the time as she accumulate nine attendance points as possible; and her employment is terminated as close to the time as she accumulates 12 points as possible.

The claimant was a no-call/no-show and received 2.00 points November 17, 2017; she left early and received .50 points December 4, 2017; she was a no-call/no-show December 7, 2017, and received 2.00 points; she was absent due to illness and received 1.00 point January 14, 2018; she was tardy arriving on the floor and received .50 points January 31, 2018; she was absent

due to illness February 18, February 21, April 22, May 6, May 9, May 18, and May 23 through May 29, 2018, with a doctor's note and received one point for each absence (Employer's Exhibit 4); and she was absent due to illness June 11, 2018, and received one point for a total of 14 points (Employer's Exhibit 1).

The claimant received a verbal warning in writing January 25, 2018, following her January 14, 2018, absence when she reached 5.50 points; she received a written warning February 8, 2018, following her January 31, 2018, absence when she reached six points; and received a three day suspension May 29, 2018, following her May 23 through May 29, 2018, absence when she reached 13.00 points (Employer's Exhibit 2). The employer terminated the claimant's employment June 12, 2018, for exceeding the allowed number of attendance points (Employer's Exhibit 5).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

While the claimant did not always call one hour before the start of her 5:40 a.m. shift, the employer did not take any disciplinary action against the employee for failing to do so. Consequently, the administrative law judge cannot consider those absences improperly reported as the claimant was never warned about when she called in to report her absences.

Nine of the claimant's 14 points for absences, including the last absence, was attributable to the claimant calling in and reporting she was ill. Because the final absence was related to reported

illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Therefore, benefits must be allowed.

DECISION:

The July 2, 2018, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs