

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA S STEVER
Claimant

APPEAL NO. 11A-UI-12671-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREAT RIVER MART
Employer

OC: 05/01/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated September 21, 2011, reference 02, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 29, 2011. The claimant participated. The employer participated by Stephanie Rozek, owner, and Julie Ray, owner. The record consists of the testimony of Stephanie Rozek; the testimony of Julie Ray; and the testimony of Melissa Stever.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a convenience store located in Cordova, Illinois. The claimant was hired on June 20, 2011, as a part-time cashier. Her last day of work was August 30, 2011. She was terminated on August 30, 2011.

The claimant was scheduled to work on September 4, 2011; September 11, 2011; and September 18, 2011. Those dates were on Sunday. The claimant did not want to work on Sunday, because she cleaned houses on Sunday. The claimant told the employer when she was hired that she would like Sundays off. The employer told the claimant that it would attempt to accommodate her, but no guarantees were made. The claimant was not scheduled for Sundays for the first two months. The claimant was asked to work three Sundays from 10:00 a.m. to 4:00 p.m. The employer was in the process of opening a restaurant and changes had to be made to the schedule. The claimant refused to work on Sunday and she was terminated by the employer as a result of that refusal.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden of proof to show misconduct.

In this case, the evidence established that the claimant refused to work three scheduled shifts because those shifts were on Sunday. When the claimant was hired, she asked the employer not to schedule her for Sunday. The employer said it would try to accommodate the claimant's schedule but made no guarantees or promises concerning Sunday shifts. The claimant knew that there was a possibility that she would be scheduled on Sunday. When she was scheduled for Sunday, she refused to work.

An employer is entitled to set reasonable work schedules. The employer here is a convenience store and the store is open on Sunday. It was not unreasonable for the employer to ask the claimant to work three Sundays, since the employer was opening a restaurant and schedules had to be changed. The claimant's refusal to work on Sunday is insubordination, which constitutes misconduct. Benefits are denied.

DECISION:

The representative's decision dated September 21, 2011, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw