

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JANAY N WRIGHT
Claimant

**AMERICAN BLUE RIBBON HOLDINGS LLC
VILLAGE INN**
Employer

APPEAL NO. 14A-UI-10912-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/21/14
Claimant: Respondent (2)**

Iowa Code § 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

American Blue Ribbon Holdings, LLC (employer) appealed an unemployment insurance decision dated October 13, 2014 (reference 01) which held that Janay Wright (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 10, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted and, therefore, did not participate. The employer participated through General Manager John Dowler and Hearing Representative Thomas Kuiper.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment, and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a part-time server from May 21, 2014 through September 22, 2014 when she was discharged for excessive unexcused absenteeism. She received a final written warning on August 25, 2014 after she was a no-call/no-show for two consecutive days ending August 24, 2014. The employer issued her another verbal warning for attendance subsequent to August 25, 2014. The claimant was a no-call/no-show on September 19, 2014 but called in her absence due to illness on September 20, 2014. She was again a no-call/no-show on September 21, 2014 and was discharged on the following day.

The claimant filed a claim for unemployment insurance benefits effective September 21, 2014 but has not received benefits as a result of this claim.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on September 22, 2014 for 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. 871 IAC 24.32(7). In order for absenteeism to be considered misconduct, the absences must be both excessive and unexcused.

The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

DECISION:

The unemployment insurance decision dated October 13, 2014 (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. There is no overpayment as a result of this claim.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/can