

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER A DAZEY
Claimant

APPEAL NO. 10A-UI-00044-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FRONTIER DUBUQUE HOTELS LLC
BEST WESTERN MIDWAY HOTEL**
Employer

OC: 11/15/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Best Western, filed an appeal from a decision dated December 15, 2009, reference 01. The decision allowed benefits to the claimant, Jennifer Dazey. After due notice was issued a hearing was held by telephone conference call on February 10, 2010. The claimant participated on her own behalf and with witness Bridget Dazey. The employer participated by Human Resources Manager Stacey Farrey and Rooms Manager Tina Gau. Exhibits One, Two, Three were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jennifer Dazey was employed by Best Western from September 25, 2008 until November 13, 2009 as a full-time night auditor. She had received the employee handbook and was given the new employee orientation. The employer's attendance policy requires at least the night auditor to call in at least four hours before the start of their shift if they are going to be absent and to find a replacement.

Ms. Dazey had received several warnings for failing to perform her job duties as required, not following hotel policies in regard to guest services and using another employee's corporate e-mail account to solicit on-line on Craig's List. The final written warning was given on September 23, 2009, and it notified her that her job was in jeopardy if there were any further violations.

On November 12, 2009, Ms. Dazey was scheduled to work at 11:00 p.m. At 9:20 p.m. she called another employee, Deb Dole, and asked her to work for her that night. She said she had been drinking and was sick. Ms. Dole said she was not scheduled and had had some drinks herself and could therefore not work.

At 9:30 p.m. she called Rooms Manager Tia Gau and gave a confused statement about not feeling well, having an upset stomach, having gone out for a drink, having gone to the airport to pick up her sister, and she was not sure if she was going to come in to work. Ms. Gau told her she had to be in at 11:00 p.m. as scheduled and Ms. Dazey agreed.

At 11:00 p.m. the claimant was no-call/no-show to work. The night auditor on duty had to leave and another employee came in to work the desk. Ms. Dazey finally arrived at 2:00 a.m. At that time she confessed to the substitute auditor she was not sick but simply had a case of nerves due to her home situation with her fiancé. The next day the claimant was discharged by Ms. Gau for another policy infraction.

Jennifer Dazey has received unemployment benefits since filing a claim with an effective date of November 15, 2009.

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.

The claimant had been advised her job was in jeopardy as a result of her failure to follow company policies. The final incident was drinking prior to going to work and then calling in less than four hours before the start of her shift, without a replacement, to say she would not be in. She asserted she was ill which does not appear to be the case at all.

When told she must come in by her supervisor, she agreed but was then no-call/no-show for the scheduled start time. She arrived three hours late during which time someone else had to find a replacement for her. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of December 15, 2009, reference 01, is reversed. Jennifer Dazey is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs