

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTIE L KING
Claimant

APPEAL NO. 12A-UI-07261-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEALTHCARE SERVICES GROUP INC
Employer

OC: 05/20/12
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Kristie King, filed an appeal from a decision dated June 6, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 11, 2012. The claimant participated on her own behalf. The employer, Healthcare Services Group (HSG), did not participate.

ISSUE:

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

FINDINGS OF FACT:

Kristie King was employed by HSG from February 1, 2012 until April 24, 2012 as a full-time housekeeper. She had requested, and been granted, vacation at least through April 23, 2012. The Housekeeping Supervisor Adam Hinkins had told her to call him on April 24, 2012, to find out if she should come to work on April 24, 2012. When she did so he told her she had been fired because she had been no-call/no-show to work April 23, 2012. When she reminded him that had been an approved day of vacation he only said the schedule listed her as being on duty.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The claimant has asserted that she was on vacation April 23, 2012, and not scheduled to work. Her failure to come to work is therefore not an unexcused absence. The employer has failed to provide any evidence to rebut the claimant's testimony and has therefore not met its burden of proof.

DECISION:

The representative's decision of June 6, 2012, reference 01, is reversed. Kristie King is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css