

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARILYN A SCHUTTE
Claimant

APPEAL NO. 09A-UI-02699-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DTM INCORPORATED
Employer

OC: 01/04/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated February 11, 2009, reference 03, that allowed unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 17, 2009. The claimant participated personally. The employer participated by Dawn Schlesselman and Barbara Corbin.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed by the captioned truck stop convenience store from July 2008 until January 3, 2009 when she was discharged for failing to report for a scheduled work shift. Ms. Schutte was employed as a part-time clerk and food preparation worker and was paid by the hour. Her immediate supervisor was Pam Schlesselman.

The claimant was discharged when she failed to report for scheduled work on Saturday, January 3, 2009, although she was scheduled to do so. Ms. Schutte has previously reviewed the work schedule and had not noted that she had been scheduled to work on that date. When the claimant noticed that she had been scheduled to work on January 3, she informed the employer's assistant manager and indicated that she would not be able to report to work that day. It appears that advance notice to management of an employee's inability to work on a specified scheduled day usually results in rescheduling by the employer. The company owner was not made aware of the scheduling conflict and expected the claimant to report for work. When the claimant did not report or provide a notification that day a decision was made to terminate the claimant. It appears that the claimant had no previous similar attendance issues. Based upon comments that had been made by others the employer believed that Ms. Schutte had expressed a disinterest in continuing in her employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits. It does not.

The evidence in the record establishes that the claimant did not initially know that she had been scheduled to work on January 3, 2009 and had made advance family plans for that day. The claimant's working hours had recently been substantially reduced and Ms. Schutte did not believe that she would be scheduled on that day. When the claimant became aware that she had been scheduled she notified an assistant manager of her inability to report reasonably believing that the notice would be sufficient to result in her being removed from the schedule. The claimant, therefore, did not attempt to secure a replacement for her shift that day. The claimant did not therefore call in on January 3 because she believed that she had been removed from the schedule.

The Supreme Court of Iowa in the case of Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989) held that a single unexcused absence did not constitute misconduct even in the circumstance where the employee had been specifically instructed to call the employer.

The question in this case is not whether the employer had a right to discharge Ms. Schulte for these reasons but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the evidence in the record is not sufficient to disqualify the claimant for the receipt of unemployment insurance benefits based upon her single absence.

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.

DECISION:

The representative's decision dated February 11, 2009, reference 03, is affirmed. The claimant was dismissed under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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