

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TENA E SWANSON**  
Claimant

**APPEAL NO. 13A-UI-06906-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BANDANA'S MISSOURI LLC**  
Employer

**OC: 05/19/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated June 5, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 17, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Brent Bemeskita participated in the hearing on behalf of the employer with a witness, Elizabeth White. Exhibit One was admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked part time as a server for the employer from June 18, 2012, to May 17, 2013. She had informed management that she could not work the dayshift and the manager had agreed not to schedule her during the day.

On May 4, 2013, the claimant gave a two-week notice that she was quitting because she was on the schedule to work the dayshift. The manager, Chris Norris, apologized and told the claimant that she would be taken off the dayshifts that she had been scheduled.

On May 5, the assistant manager, Elizabeth White, asked her what the employer could do to get her to stay working. The claimant told her to stop scheduling her to work the dayshift. White agreed not to schedule her to work days and threw the notice to quit in the trash. At that point, the claimant's notice to quit was rescinded and she was going to continue working.

While the claimant was working on May 11, she noticed that she was scheduled to work days on May 17 and 18. She pointed this out to Norris who said he would get someone to cover those days.

During the day on May 18, the claimant received text messages from employees telling her that she was late and asking where she was because she was scheduled to work. The claimant

called Norris who said he would get someone to cover the shift. Later, the claimant received a phone call from a server telling her that the shift had been covered. The claimant complained to the server about getting nasty text messages from another server at work and that it was ridiculous. The claimant then received a phone call from Norris asking her what her “f-ing problem was.” She replied that she did not have a problem and would be reporting to work that night. She told Norris that she had given her notice two weeks before, but she was being scheduled days. Norris then told the claimant that he was tired of her and she was “f-ing” fired.

The employer discharged the claimant because she was considered demanding and was objecting to her work schedule.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The employer allowed the claimant to rescind her resignation. Norris discharged the claimant on May 18.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. The claimant had the right to complain when she had been repeatedly assured that she would not be scheduled to work days, yet for whatever reason, she continued to be scheduled days.

**DECISION:**

The unemployment insurance decision dated June 5, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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