

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEILA L RISTOW
Claimant

APPEAL NO. 07A-UI-03305-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES
Employer

**OC: 03/04/07 R: 12
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

IOC Services filed an appeal from a representative's decision dated March 28, 2007, reference 01, which held that no disqualification would be imposed regarding Sheila Ristow's separation from employment. After due notice was issued, a hearing was held by telephone on April 17, 2007. Ms. Ristow participated personally. The employer participated by Linda Tanner, Beverage Manager, and Sara Frank, Human Resources Manager Associate.

ISSUE:

At issue in this matter is whether Ms. Ristow was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Ristow was employed by IOC Services from April 24, 2006 until January 10, 2007 as a part-time beverage server. She worked from 20 to 32 hours each week. She was discharged because she exceeded the number of attendance occurrences allowed by the employer.

Ms. Ristow properly reported the intent to be absent on January 10 due to illness. She was absent on May 4, May 7, and August 19 due to illness but failed to give the required two-hour's notice on all three occasions. The calls were from 15 minutes to one hour before the start of her shift. Ms. Ristow was absent for personal reasons on June 25. She was absent without notice on August 15 because she did not realize she was scheduled to work that date. She did not have any attendance infractions between August 15 and January 10. She received warnings about her attendance on June 25, August 16, and August 19, 2006. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had

the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

The employer's burden of proof in this matter included establishing that the discharge was based on a current act that constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). The final incident that prompted Ms. Ristow's discharge was her absence of January 10, 2007. The absence is excused as it was for reasonable cause, illness, and was properly reported. Because the absence is excused, it was not an act of misconduct.

Ms. Ristow was absent without notice on August 15, 2006. Even if the administrative law judge were to conclude that the absence is unexcused, it still would not be a current act in relation to the January 10 discharge. There were no intervening attendance occurrences or other acts of misconduct between August 15 and January 10. Inasmuch as the evidence failed to establish a current act of misconduct, no disqualification is imposed. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated March 28, 2007, reference 01, is hereby affirmed. Ms. Ristow was discharged but a current act of misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs