

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNY R DRAKE

Claimant

APPEAL NO. 08A-UI-08045-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COURTESY NISSAN-JEEP

Employer

**OC: 08/03/08 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jenny R. Drake filed a timely appeal from an unemployment insurance decision dated August 29, 2008, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held September 23, 2008 with Ms. Drake participating. Controller Carol Power testified for the employer which was represented by Lesley Buhler.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jenny R. Drake was employed as a cashier by Courtesy Nissan-Jeep from August 27, 2007 until she was discharged August 8, 2008. The events causing her discharge occurred on August 1, 2008, a particularly busy business day for the employer.

Ms. Drake called the employer to say that she would be unable to work that day because her day care provider had told her that she must pick up her children because she had not paid the day care provider. Ms. Drake was actually on her way to work when she learned of this. After contacting the employer, Ms. Drake attempted to borrow money from a family member in order to pay the day care provider. While she was doing so, Controller Carol Power contacted the day care provider and learned that Ms. Drake's children were still there. From this, Ms. Power concluded that Ms. Drake had lied about the reason for her absence. Ms. Drake later picked up the children after being unable to borrow money to pay the provider.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does not.

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. Ms. Power testified that the discharge was not based on attendance but upon her conclusion that Ms. Drake had lied. Having heard the testimony of both witnesses, the administrative law judge concludes that the evidence does not establish that Ms. Drake had lied to the employer. It is as likely that Ms. Power contacted the day care provider while Ms. Drake was attempting to obtain money to pay the day care provider so that she could come to work. Since misconduct has not been established by a preponderance of the evidence, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated August 29, 2008, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs