

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI MCGRANE
Claimant

APPEAL NO. 08A-UI-04236-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOUTHTOWN LOUNGE
Employer

**OC: 04-06-08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 28, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on June 2, 2008. The claimant participated in the hearing with James Lynott, Cook/Friend. Debra Youngblut, Owner, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two, and Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time prep work employee for Southtown Lounge from March 19, 2007 to April 5, 2008. The claimant was working six days per week from 7:00 a.m. to noon or 1:00 p.m. She was hired by the local school district as a teacher associate substitute, and that job conflicted with the hours she was scheduled to work with the employer. The employer was willing to accommodate her substitute schedule. Rather than tell the employer when she had to work for the school district, the claimant left notes for her in the office, even though the employer was present when the notes were left. After approximately one month, the employer told the claimant several times to quit leaving notes and to speak to her directly when she needed time off for her other job, but the claimant continued to leave notes (Employer's Exhibit One). On April 2, 2008, the claimant asked the employer what days she could work that week and the employer told her it needed her Friday, Saturday, and Monday. The co-owner also told the claimant at that time to quit leaving notes. The claimant physically worked next to the employer Friday, April 4, 2008, and left a note at the end of her shift in the office stating she could not work Saturday, April 5, 2008, because she had to take her son out of town (Employer's Exhibit Two). The employer did not find the note until 10:00 p.m. that evening. On Saturday, April 5, 2008, Cook/Friend James Lynott was speaking to the claimant on the phone. The employer was aware Mr. Lynott was talking to the claimant and told him to tell her that her employment was terminated for leaving another note and not working Saturday as scheduled. The claimant testified she had to take her son to a psychologist appointment in Waverly, Iowa,

Saturday, April 5, 2008, and left Waterloo at 11:50 a.m. but did not provide documentation of that appointment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant was told on several occasions not to leave notes for the employer telling her she would not be in the following day. Additionally, the co-owner told the claimant not to leave any more notes April 2, 2008, and the claimant did not have to work at the school April 5, 2008. Despite those warnings, however, the claimant left a note for the employer April 4, 2008, stating she would not be at work April 5, 2008, after physically working right next to the employer all day. The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The April 28, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw