

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY D COLLINS
Claimant

APPEAL NO. 11A-UI-11136-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS BR MANAGEMENT CO INC
Employer

OC: 07/10/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 18, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on September 16, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Vicki Broussard participated in the hearing on behalf of the employer. Exhibits One to Six were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an environmental services (EVS) worker from July 11, 2006, to July 8, 2011. She was informed and understood that under the employer's work rules, team members were required to perform duties carefully, attentively, and with regard for giving a fair day's work for a day's pay.

The claimant was warned on September 4, 2010, about violating a company policy prohibiting employees who have not received training from serving drinks. She was warned on November 18, 2010, for not giving a fair day's work for a day's pay when she was observed spending 21 minutes in the EVS closet, which was considered excessive. She received a final written warning on June 18, 2011, for taking excessive breaks and being out of her assigned area.

On July 6, 2011, an employee reported to management that the claimant had spent an excessive amount of time talking to an off-duty server at the bar instead of working. A supervisor reviewed video that showed the claimant was unproductive for eight minutes while talking to the server.

As a result of her conduct on July 6, 2011, and her prior discipline, the employer discharged the claimant on July 9, 2011.

REASONING AND CONCLUSIONS OF LAW:

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

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. 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).

The claimant's conduct and violation of a known work rule and warnings amount to willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant had been warned about wasting time on more than one occasion, but continued with the same behavior on July 6, 2011. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated August 18, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs