

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALYSSA L LINVILLE**  
Claimant

**APPEAL NO: 12A-UI-05441-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOWLING DOGS INC**  
Employer

**OC: 04/01/12  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated May 1, 2012, reference 02, that held the claimant was not discharged for misconduct on April 5, 2012, and benefits are allowed. A hearing was held in Cedar Rapids, Iowa on August 13, 2012. The claimant participated. Steve Perneti, President. Claimant Exhibit A and Employer's Exhibits 1, 2 & 3 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on February 17, 2012, and last worked for the employer as a part-time café worker on April 1. She was re-employed after a prior period of employment.

The claimant last worked on or about Sunday April 1. Claimant had agreed to work a shift with a specified start time the week before. When she got an e-mail about it, she noted the start time had been changed that would make her late to work due to a pre-scheduled doctor's appointment. She advised the employer she could not work as scheduled.

On April 5 after a management team review the employer terminated claimant by an e-mail communication without stating a reason. The claimant had not received any prior written or verbal warning her job was in jeopardy. Although the employer had some issues with claimant not wearing a hair covering and performing job duties, it concluded she could no longer be trusted as the motivating reason for termination.

**REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on April 5, 2012.

The employer failed to establish the standard of required behavior by issuing claimant a written or documented verbal warning that her job was in jeopardy. The employer failed to produce witnesses and/or documentary evidence claimant failed to perform her job duties to the point of termination.

**DECISION:**

The department decision dated May 1, 2012, reference 02, is affirmed. The claimant was not discharged for misconduct on April 5, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs