

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAIRA K SCHOONOVER
Claimant

APPEAL NO. 07A-UI-03323-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNTRYSIDE RETIREMENT HOME
Employer

**OC: 04/02/06 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 30, 2007, reference 07, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 17, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Roni Ryan. Debbie Menzenberg participated in the hearing on behalf of the employer with a witness, Cheri Carmen.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a dietary aide from January 26, 2007, to March 12, 2007. She was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer four hours before the start of the shift if they were not able to work as scheduled and to find their own replacement.

The claimant was counseled regarding her attendance on February 6, after she was late for work twice and was absent from work. She was counseled again on March 10 for reporting late for work.

The claimant was scheduled to work on March 10 and 11. On March 10, she was notified about a funeral that she wanted to attend on March 11. She contacted another dietary aide, Danny Boyle, who agreed to work for her on March 11. The claimant contacted her supervisor, Cheri Carmen, and told her about the funeral and that Boyle agreed to replace her. Carmen told the claimant that she would be required to work for Boyle on March 13 if it involved overtime hours for Boyle. The claimant said she understood, and Carmen said she would let the claimant know if she had to work.

After the claimant reported work on March 12, Carmen told her that she had to work on March 13. The claimant told Carmen that she had three appointments and would have to see if

she could get them changed. Carmen instructed the claimant to contact her if she was not able to work.

The claimant's appointments were an oil change, which she rescheduled, and medical appointments for herself and her younger sister. She was informed that she could not reschedule the appointments because she had rescheduled before. The claimant did not call Carmen back, but instead called Boyle and left a message on his answering machine that he would have to work.

Boyle did not report to work the next day. When the claimant had not reported to work on the morning of March 13, Carmen called her and left a message stating that she needed to call Carmen, and if she did not, she would be terminated. The claimant did not call until March 14. She was informed that she was terminated. She was discharged due to her past history of attendance issues and because she was absent without notifying her supervisor as she was instructed to do.

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.

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's violation of the instruction given to her to call Carmen after trying to reschedule her appointments was a 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. Her excuse that she did not have Carmen's telephone number with her is unacceptable. Leaving a voice mail for Boyle was hardly a reasonable way to communicate with him about working, because the claimant had no idea whether Boyle would receive the message before March 13 or not. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated March 30, 2007, reference 07, 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/kjw