

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JENNIFER R HENDERSON
3700 – 5TH AVE APT 1
DES MOINES IA 50313 4230

AIRPORT LODGING LLC
1501 RIVER DR
MOLINE IL 61265

Appeal Number: 06A-UI-03816-DWT
OC: 03/05/06 R: 02
Claimant: Respondent (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Airport Lodging LLC (employer) appealed a representative's March 24, 2006 decision (reference 01) that concluded Jennifer R. Henderson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2006. The claimant participated in the hearing with her witness, Linda Olson. Jeff Smith, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in late November 2002. The claimant worked full time driving a van and performing maintenance work. Smith became the claimant's supervisor on July 11, 2005. Since May 6, 2004, the claimant worked 8:00 a.m. to 4:00 p.m.

The employer changed the claimant's schedule to work to 9:00 a.m. to 5:00 p.m. When the claimant informed the employer the new schedule would not work because she did not have child care after 4:30 p.m., the employer suggested the claimant contact the school for after school care. The claimant contacted the school and there was no opening for her child. As of March 8, the claimant was unable to find any one to take care of her child until after 5:00 p.m.

When the claimant could not work until 5:00 p.m. on March 8, the employer indicated that this was one strike against her. The employer further informed the claimant that if she could not work until 5:00 on March 9 or 10, she would have three strikes and the employer would discharge her. The employer gave the claimant the option of working until the end of the week or she could end her employment immediately. The claimant knew she was unable to work until 5:00 p.m. any of these days and decided she would not work after March 8, 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts establish the claimant could have worked until 4:00 p.m. until the end of the week, but would then have been discharged because she was unable to work until 5:00 p.m. on March 8, 9 and 10, 2006. The employer effectively discharged the claimant.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant because for personal reasons she could work until 5:00 p.m. an hour later than she had worked for about two years. The facts show that neither party attempted any compromise in the work schedule. Ultimately, the employer discharged the claimant because she was unable to work a new schedule the employer had just implemented for business reasons. Under these facts, the claimant is qualified to receive unemployment insurance benefits as of March 12, 2006.

DECISION:

The representative's March 24, 2006 decision (reference 01) is modified, but the modification has no legal consequence. The employer discharged the claimant when the claimant was unable to work as recently work scheduled. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of March 12, 2006, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc