

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

DOLLIE E ALLEN
814 8TH ST
BOONE IA 50036

HTB INVESTMENTS INC
TIC TOC RESTAURANT & LOUNGE
PO BOX 484
BOONE IA 50036

Appeal Number: 04A-UI-01120-B4T
OC: 12/28/03 R: 02
Claimant: Respondent (1)

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
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

An appeal was filed on behalf of HTB Investments, Inc., from an unemployment insurance decision dated January 23, 2004, reference 01, that held, in effect, Dollie E. Allen was separated from her employment with HTB Investments, Inc., on October 3, 2003 for no disqualifiable reason. Unemployment insurance benefits were allowed.

A telephone conference hearing was scheduled and held on February 17, 2004 pursuant to due notice. Dollie E. Allen responded the notice of hearing mailed to her by the Appeals Section by providing a telephone number of where she could be contacted at the time of the scheduled hearing. A call placed to the number provided resulted in an answer of the Boone Iowa

Workforce Development Department office. The claimant was not present at the time of the call and did not participate in the hearing that was held.

Chris Thompson-Bolton, President, participated on behalf of HTB Investments, Inc.

Official notice was taken of the unemployment insurance decision bearing reference 01 together with the pages attached thereto (4 pages in all). Employer Exhibit One consisting of 7 pages was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Dollie E. Allen was employed as a kitchen worker on August 4, 2001. At the time of her hire, the claimant acknowledged receipt of the entire policy manual adopted by HTB Investments, Inc., as shown by page six attached to Exhibit One admitted into evidence. The policy contained a rule as shown by page five attached to Exhibit One. The rule held in effect if you are scheduled to work and a phone call is not received for your absence, we will assume you quit. During the tenure of the claimant's employment she was absent or tardy on numerous occasions and was warned on various occasions allegedly by Chris Thompson-Bolton. The evidence disclosed that the claimant did call in on numerous occasions when she was to be absent or tardy for any reason.

The claimant, in addition, received a warning on June 19, 2003 regarding a verbal confrontation she held in the kitchen with a coemployee, which could have been overheard by customers.

Following June 19, 2003, the claimant was never warned in writing that her job was in jeopardy on any occasion. The last verbal warning occurred some time in September regarding an incident of tardiness.

The claimant's last day of work on the job was October 2, 2003. On October 3, 2003, the claimant was scheduled to report for work and failed to do so in violation of the company rule. The employer then assumed that the claimant had voluntarily left her employment.

The claimant filed an initial claim for benefits having an effective date of December 28, 2003 and as of the date of the hearing held in this matter, the claimant has not received benefits in any amount.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

An employer may adopt whatever rule it desires with respect to absenteeism and tardiness, however, a violation of the rule does not necessarily constitute misconduct. The claimant's absence from an assigned work shift on October 3, 2003 does not constitute misconduct or a voluntary quit within the intent and meaning of the foregoing sections of the Iowa Administrative Code. While the conduct of the claimant is far from exceptional, she was never warned that her job was in jeopardy because of the incidents of absenteeism and tardiness and no warnings had been given to the claimant within a reasonable time prior to her last day of work on October 2, 2003.

The administrative law judge concludes that Dollie E. Allen was separated from her employment with HTB Investments, Inc., on October 3, 2003 for no disqualifiable reason within the intent and meaning of the foregoing sections of the Iowa Code.

DECISION:

The unemployment insurance decision dated January 23, 2004, reference 01, is affirmed. Dollie E. Allen is eligible to receive unemployment insurance benefits provided she meets all other eligibility requirements.

kjf/b