

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASMINE A JONES
Claimant

APPEAL NO: 17A-UI-11821-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EJG MANAGEMENT LLC
Employer

OC: 10/08/17
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's unemployment insurance decision dated November 8, 2017, reference 02, which held claimant eligible to receive unemployment insurance benefits finding that the claimant was dismissed on October 12, 2017 under non disqualifying conditions. After due notice was provided, a telephone hearing was held on December 8, 2017. Claimant participated. The employer participated by Ms. Melynn Davis, General Manager. Employer's Exhibits A and B were admitted into the hearing record and the claimant's continuing objection noted. The proposed exhibits from the claimant were not received by the administrative law judge or the employer. The claimant made a pre-offer of the exhibits and testified to the contents.

ISSUE:

Whether the claimant was discharged for job related misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Jasmine Jones began as a McDonalds part-time crew member on May 5, 2013. On August 9, 2016, the business was purchased by new owners and Ms. Jones continued to work as a part-time crew member until October 13, 2017 when she was discharged from employment. Ms. Jones worked on days that she was placed on the schedule to work by the employer. The days she was available to work were also limited by another job that Ms. Jones had. The claimant's last immediate supervisor was Ms. Melynn Davis, General Manager.

Jasmine Jones had not been scheduled to work by EJG Management, LLC for an approximate two month period before being placed back on the schedule to work on October 11, 2017.

On Thursday, October 12, 2017, Ms. Jones reported for work. Ms. Davis, the General Manager, noted that the claimant was not wearing a visor or company hat. Because company management had recently emphasized that crew members must be wearing a hat or visor, Ms. Davis questioned the claimant about why she was not wearing the required head covering.

When Ms. Davis asked the claimant where her visor was, Ms. Jones responded “at home.” The General Manager then instructed the claimant that she could not work without a head covering, and “that she should go home to get it”

Because Ms. Jones lived some distance from the McDonald facility, the claimant made a reference to the time it took her to walk to work, and requested permission to see if another employee had a hat or visor that Ms. Jones could borrow. The claimant was given permission to do so. When Ms. Jones was unable to borrow either a hat or visor from anyone on duty, she informed “Crystal” a manager in training that she had been unable to borrow a head covering.

Because Ms. Jones was instructed she could not work without the head covering and had been told that she needed to leave in order to get one, Ms. Jones went home.

Ms. Jones was unable to find the appropriate head gear at home and assumed that she could not return to work without it. Ms. Jones was scheduled to work the following day, October 13, 2017. Claimant was able to borrow a visor from another employee by then and reported for work for her next shift on October 13, 2017. After working a short period of time, she was called to Ms. Davis’ office. Ms. Davis had considered the claimant’s leaving the previous day without returning to be “job abandonment” and discharged Ms. Jones from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant was discharged for job related misconduct sufficient to warrant the denial of unemployment insurance benefits, she was not.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

An employer may discharge an employee for any number of reasons or no reason at all but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

In the case at hand, the claimant was sent home because she did not have the proper head gear. The rule requiring that a crew member wear head gear had recently been re-emphasized by the employer during a period that Ms. Jones had not been scheduled to work. On October 12, 2017, the claimant was told in effect to go home and get her visor or hat because she could not work unless she was wearing a head covering. The claimant attempted to borrow head covering from employees who were on duty but was unable to do so. She informed the manager in training that she could not find head gear and going home as instructed. When the claimant arrived home she could not find the required head gear and reasonably assumed that she should not return to work without it. Ms. Jones informed the manager in training that she had been sent home. She believed that she was following the General Managers directive.

It was not Ms. Jones' intent to abandon her job. The claimant reported for scheduled work the following day, at that time having borrowed head gear from another person. Although the claimant did not have a history of unsatisfactory attendance, the employer made a management decision to discharge Ms. Jones because she had left work but had not returned the previous day.

The Supreme Court of the State of Iowa in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer. The court held in *Roberts v. Iowa Department of Job Service*, 356 N.W.2d 218 (Iowa 1984) that even unreported absences that are unreported due to incapacity or because of the nature of the absence are considered excused. (Here, the claimant had been directed to go home.)

The court in the case of *Sallis v. EAB*, 437 N.W.2d 895 (Iowa 1989) held that a single unexcused absence does not constitute misconduct even in a case in which an employee disregarded the employer's specific instruction to call the employer back with a status report but did not do so.

The above stated reasons, the administrative law judge concludes that the claimant did not engage in job abandonment, nor did her absence from work constitute intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. The decision to terminate Ms. Jones may have been a sound decision from a management viewpoint, but for the above stated reasons, the administrative law judge concludes that the claimant's conduct did not rise to the level of intentional disqualifying misconduct sufficient the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant meets all the eligibility requirements of Iowa law.

DECISION:

The representative's decision dated November 8, 2017, reference 02 is affirmed. Claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn