

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY R BROWN
Claimant

APPEAL NO. 11A-UI-08201-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA
Employer

OC: 04/24/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Tiffany R. Brown filed a timely appeal from an unemployment insurance decision dated June 8, 2011, reference 01, that disqualified her for benefits. Due notice was issued initially for a telephone hearing to be held July 8, 2011. The employer requested several continuances. After due notice was again issued, a telephone hearing was held August 1, 2011 with Ms. Brown participating. Although the employer provided the name and telephone number of a witness, the witness was not available when called at the time of the hearing. The administrative law judge left a message for the witness to call if she wished to participate. There was no further contact from the employer.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Tiffany R. Brown was employed by APAC Customer Services of Iowa from September 8, 2010 until she was discharged April 26, 2011. She worked full time as a customer service representative. The employer granted the claimant's request for a week off in order to secure new child care arrangements. She was discharged when she returned to work.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with her employment. It does not.

Iowa Code § 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 employer has the burden of proof. See Iowa Code § 96.6-2. As noted above, the employer did not participate. The claimant testified under oath that she was discharged after returning to work following approved time off. This is not sufficient to establish misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated June 8, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs