

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GENELLE R SCHONROCK**  
Claimant

**APPEAL NO. 10A-UI-09100-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIOUX CITY DQ INC**  
Employer

**OC: 05/30/10  
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated June 22, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 11, 2010. The claimant participated. The employer participated by Melissa Jepsen, manager. The record consists of the testimony of Melissa Jepsen; the testimony of Genelle Schonrock; and Claimant's Exhibits A and B.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer operates a Dairy Queen restaurant known as the Morningside store in Sioux City, Iowa. The claimant had previously worked for the employer and was initially hired back as an on-call employee. The claimant was terminated on May 3, 2010, for failing to come to work. The claimant had been issued a subpoena to appear in the Iowa District Court for Woodbury County on May 3, 2010, at 1:00 p.m. (Exhibit A)

The claimant and the employer disagreed on whether the claimant had informed the employer about the subpoena prior to May 3, 2010. The claimant and the employer also disagreed on whether the claimant had had any prior unexcused absences after her return as an on call employee and her termination.

## 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

Although excessive unexcused absenteeism is misconduct, the employer must show both excessive and unexcused absenteeism and that the final absenteeism was unexcused. In this case, the claimant was terminated because she could not work her shift on May 3, 2010. The claimant had been subpoenaed by the District Court for Woodbury County. The claimant said that she informed the employer about the subpoena at the time she was re-hired and then approximately 1½ weeks before she was scheduled to be in court. The employer denies this. The employer also cited two other instances of the claimant having an unexcused absence, which the claimant denied. The employer could not provide any dates for these two unexcused absences, other than to say they occurred on a Friday.

After carefully considering all of the evidence in this case and weighing the testimony of the witnesses, the administrative law judge concludes that there is insufficient evidence of a current act of misconduct. A subpoena compelling one's attendance in court would be considered an excused absence. The claimant had no control over this situation, similar to a claimant having no control over getting sick and being unable to work. The claimant's testimony that she told Ms. Jepsen about the subpoena before May 3, 2010, is accepted. Since there is insufficient evidence of a current act of misconduct, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated June 22, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw