

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH KANE**  
Claimant

**APPEAL NO: 14A-UI-10611-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VILLA ENTERPRISES INC**  
Employer

**OC: 09/14/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 2, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 30, 2014. The claimant participated in the hearing. The employer did not respond to the hearing notice by providing a phone number where it could be reached at the date and time of the hearing as evidenced by the absence of a name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time pizza maker for Villa Pizza from September 21, 2012 to September 14, 2014. He was discharged because the employer accused him of a no-call/no-show absence on a day off he agreed to work for another employee.

On September 13, 2014, the employer asked the claimant if he could work the following day, which was his day off, for another employee. The claimant stated he would have to let the employer know the next day. The claimant notified the employer he could work September 14, 2014, but when he went out to go to work he had three flat tires because he had bad tires. He could not find a ride to work because his family members were not home at the time. He called the employer twice because it did not answer his first call. The second call was answered by General Manager Justin Knight and he said "okay."

The claimant was not scheduled to work that weekend because the employer had cut his hours from 40 to 11 per week and demoted him from a key holder to a pizza maker the week before. During the evening of September 14, 2014, the claimant called the employer and asked for his schedule. Assistant Manager Travis Bay answered the phone and the claimant asked for his

schedule. Mr. Bay gave the phone to Mr. Knight who told the claimant he talked to the district manager and they decided to terminate the claimant's employment because they considered his September 14, 2014, absence a no-call/no-show. The claimant denies receiving any previous written or verbal warnings.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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 proving disqualifying misconduct. 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 substantial and 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).

The claimant testified he called in to report he could not work for another employee September 14, 2014, after originally telling the employer he could do so on his day off, because he had three flat tires. He further testified that after calling the restaurant the first time and not getting an answer he called Mr. Knight back and when he stated he would not be able to make it in for his shift Mr. Knight said, "Okay." The claimant denies that he was a no-call/no-show September 14, 2014. He also denies any previous written or verbal warnings.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not establish disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits must be allowed.

**DECISION:**

The October 2, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css