

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

TONYA M ADAMS
4014 WESTOVER RD SE #4
CEDAR RAPIDS IA 52403

CORK N FORK INC
2828 HILLHAVEN CT SE
CEDAR RAPIDS IA 52403-3542

Appeal Number: 04A-UI-01140-HT
OC: 02/16/03 R: 03
Claimant: Appellant (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

STATEMENT OF THE CASE:

The claimant, Tonya Adams, filed an appeal from a decision dated January 21, 2004, reference 10. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 24, 2004. The claimant participated on her own behalf. The employer, Cork N Fork, participated by Owner Leonard Skvor.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Tonya Adams was employed by Cork N Fork from September 19 until November 29, 2003. She worked part-time doing food preparation.

Ms. Adams missed work on October 24, 2003 due to lack of transportation and October 28, 2003, for medical reasons. She missed work November 14, 2003, for unknown reasons and was given a verbal warning on November 17, 2003, by Owner Leonard Skvor. He notified her that he was not pleased with her attendance and that he would not "tolerate" any more.

The claimant was absent on November 24, 2003, due to medical reasons and on November 28, 2003, because she was in jail after being pulled over for speeding and was discovered to be driving with a suspended license. She was notified on November 29, 2003, that she was fired.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant had been advised her job was in jeopardy as a result of her absenteeism. After the warning, she was absent two more times, once for medical reasons and the final occurrence due to being in jail. Her incarceration was due to driving with a suspended license and speeding. The final incident of absenteeism is for a purely personal reason which is not excused. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The claimant is disqualified.

DECISION:

The representative's decision of January 21, 2004, reference 10, is affirmed. Tonya Adams is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjf