

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA S STOCK
Claimant

APPEAL NO. 08A-UI-01910-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROW VALLEY GOLF CLUB
Employer

**OC: 01/13/08 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 14, 2008, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on March 11, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with witnesses, Megan Ervin and Alicia Searles. Marc Struelens participated in the hearing on behalf of the employer with a witness, Audrey Schoch. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time as a server for the employer from April 19, 2006, to January 6, 2008. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer before the start of their shift on each day they were absent and absence from work for three or more days without a satisfactory explanation would result in automatic termination.

The claimant was scheduled to work on January 9, 10, 11, and 12, 2008. On January 9, the claimant was scheduled to work at 5:00 p.m. The claimant's brother was diagnosed with lung cancer in August 2007. On January 9, her brother was hospitalized and his condition was elevated to level-four cancer, which is a critical cancer stage. When the claimant received this information, she was very distraught and did not feel she was able to work due to her emotional state. She had her cousin called the clubhouse to report her absence because she felt too overwrought to call herself. The cousin talked to the office manager at 5:00 p.m. and told her the claimant would not be at work that night because of a family emergency and would be contacting the employer as soon as she was able to.

The claimant did not contact anyone with the employer on January 10, 11, and 12. She called late at the end of the normal workday on January 10 to talk to her supervisor, Audrey Schoch, but no one answered. That was the only time she tried contacting the employer. She knew the

restaurant was going to be closing for a month starting January 14 and figured that she would go in and explain what had happened sometime during that week. Also, she was busy with family matters.

After the claimant was absent from work without notice on January 10, 11, and 12, Schoch sent her a letter informing her that her employment had been terminated effective January 13, 2008, due to job abandonment, and she would need to turn in her uniform to get her final paycheck.

On January 16, the claimant came to the clubhouse to pick up her paycheck. Schoch notified her that her employment had been terminated and she needed to turn in her uniform. The claimant offered no explanation for her absences and lack of notice to the employer.

The employer terminated the claimant based on its work rule that an absence from work for three or more days without a satisfactory explanation would result in automatic termination.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. There is no question that the claimant had a legitimate reason for being absent. She had no legitimate reason, however, for not contacting the employer in compliance with its reasonable work rule that she call in on each day of absence. This is especially true because the message left by the claimant's cousin was that she would not be at work that night. Calling the employer sometime during the normal workday could not have been difficult or burdensome. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

Finally, the claimant attempted to show that her supervisor had it out for her and disliked her. She asserted that she had grounds for quitting, but did not quit. Even if this were true, in a discharge case, the unemployment insurance law focuses on the conduct of the claimant and whether the conduct meets the standard of work-connected misconduct. The claimant's failure to comply with a reasonable work rule constitutes misconduct.

DECISION:

The unemployment insurance decision dated February 14, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw