

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARA K LUBAVS
Claimant

APPEAL NO. 14A-UI-00061-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABRH LLC
Employer

OC: 12/01/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 23, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on January 27, 2014. Claimant participated along with her witnesses Ron Batt. Employer did participate through Jean Montgomery, General Manager and was represented by Robin Moore of Equifax.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a waitress/server beginning on April 30, 2008 through December 4, 2013 when she was discharged. The claimant was given two warnings in October 2013 for being a no-call/no-show for work. On November 6, 2013 the claimant was written up for abandoning her station. Her written warning put her on notice that she “must remain in the service area at all times while on duty.” The claimant had left her workstation without permission and without notifying anyone and had gone outside to smoke a cigarette.

On December 4 the claimant arrived at her normal time to open the restaurant. Around 9:00 a.m. the claimant asked Ms. Montgomery if she could leave early as she did not think the restaurant was busy. Ms. Montgomery told her she could not leave as she would be needed for the lunch hour. The claimant did not advise Ms. Montgomery at that time that she was ill or did not feel well. Around 10:30 a.m. the claimant asked Ms. Montgomery if she could take a break and was told no. The claimant did not report to Ms. Montgomery that she was not feeling well. The claimant continued to work and did not appear ill. The claimant simply did not want to work that day.

The claimant was scheduled to work until 1:00 p.m. Around noon the claimant asked Debbie, another server to take all the new tables in her section. She did not tell Ms. Montgomery that she had done so. Ms. Montgomery noticed Debbie taking care of one of the claimant’s tables

and asked her why she was doing so. Debbie told her the claimant had asked her to. Ms. Montgomery found the claimant sitting in the break room not working. The claimant was not allowed to take herself off of work, that was the decision of the manager. The claimant simply did not want to work so she asked others to take over for her. The claimant did not even tell Ms. Montgomery that she was taking herself off tables. The claimant never told Ms. Montgomery she was not feeling well, until Ms. Montgomery asked her why she was not covering her section. It was then that the claimant said she was not feeling well. The claimant simply did not want to work. Once she told Ms. Montgomery she was not feeling well, she was not put back out on the floor. On December 4 no other employees ever told Ms. Montgomery that the claimant was ill.

The claimant was discharged for not following the proper procedure, that is for taking herself off the schedule without permission from a the manager and without even notifying the manager.

Mr. Batt was not present when any of the events occurred and had been discharged by Ms. Montgomery previously.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant did not have the authority to cut herself from the floor. The administrative law judge does not believe the claimant was ill, she merely wanted to go home early. The claimant had been given a specific warning a month earlier that she was not to abandon her workstation. The claimant knew or should have known that her job was in jeopardy. The claimant alleges that she told two other servers that she was ill and each of them asked Ms. Montgomery to let her go home. The claimant did not have either of those two employees testify, but did have a disgruntled former employee who was not even present in the workplace that day testify. Claimant's repeated failure to follow instructions, that is not to abandon her workstation, after having been warned is evidence of misconduct such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The December 23, 2013, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css