

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUTUMN HANNA HARRIS
Claimant

APPEAL NO. 09A-UI-02340-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HUNTINGTON LLC
Employer

**Original Claim: 01-04-09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 4, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 9, 2009. The claimant participated in the hearing. John Huntington, Owner/President, participated in the hearing on behalf of the employer.

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 server for Huntington's restaurant from April 14, 2008 to December 28, 2008. On December 2, 2008, the claimant called the manager to ask about some problems she was having on the job. The claimant had to leave early November 30, 2008, to take her child to the hospital and believed Owner/President John Huntington was upset with her. The manager told her she did not understand why Mr. Huntington was treating her unfairly and that he had wanted to cut her hours for some time. The claimant asked the manager if she should just quit because Mr. Huntington was upset and also told her that she was considering a job at Perkins to accommodate her child's medical condition. On December 3, 2008, Mr. Huntington asked the claimant what was going on but the claimant did not feel able to talk about her child's serious medical condition at that time and said they could talk later and Mr. Huntington insisted they speak at that time. The conversation devolved into a shouting match. On December 4, 2008, Mr. Huntington asked the claimant if she was going to quit and the claimant said she was not because she would only be working days at Perkins and nights for the employer so there would be no conflict. She stated she thought she could work Monday and Wednesday nights. During the week of December 15, 2008, the claimant worked Monday and asked another employee to cover her Wednesday shift so she could attend her child's Christmas program. She notified the employer she asked the other employee to cover for her. She did not work the following two Wednesdays because it was Christmas Eve and New Year's Eve and the employer closed at 2:00 p.m. on those days. On December 28, 2008,

Mr. Huntington left a message for the claimant to call him but she went in so she could check her schedule. When she arrived, she discovered she was not on the schedule and Mr. Huntington told her he was going to honor her request to quit and the claimant stated she thought their problems were behind them and everything was okay but Mr. Huntington did not change his mind.

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.

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 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). While the employer maintains the claimant quit, she actually only asked the manager if she thought she should quit, 26 days before the separation. The claimant never told Mr. Huntington she was quitting; although she asked that her scheduled hours be cut to Monday and Wednesday nights, she did

not quit. Both parties were experiencing health crises in their families and there was tension between them that resulted in a failure to communicate effectively with each other. The claimant did ask to reduce her part-time hours. That is not, however, misconduct as defined by Iowa law. Consequently, the administrative law judge concludes the claimant was discharged from her employment for no disqualifying reason. Therefore, benefits are allowed.

DECISION:

The February 4, 2009, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw