

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY L CHARON
Claimant

APPEAL NO. 13A-UI-06071-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUCKS INC
Employer

OC: 04/21/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 17, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a hearing was held by telephone conference call on June 27, 2013. The claimant participated personally. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Tracy Charon.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, makes the following findings of fact: The employer is a convenience store located in Council Bluffs, Iowa. The claimant was hired on August 12, 2009. The claimant was promoted to the job of assistant manager. She was a salaried employee who worked 49 hours per week. The claimant was terminated by the employer on April 25, 2013.

The claimant worked from 7:00 a.m. to 3:00 p.m. On April 24, 2013, she stayed until 4:15 p.m. because another employee had not come in. The employer terminated her because she did not stay until 5:00 p.m. The claimant did not falsify any time records. She had never had a written or verbal warning nor had she ever been told she had to work until 5:00 p.m.

REASONING AND CONCLUSIONS OF 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. There is not a scintilla of evidence in this case that the claimant was terminated for misconduct. The employer elected not to participate in the hearing and provided no evidence of misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated May 17, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant meets all eligibility requirements.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs