

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKIE COLLINS

Claimant

APPEAL NO: 12A-UI-05302-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WIDE RIVER WINERY LLC

Employer

OC: 09/11/11

Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct

Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 24, 2012, reference 04, 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 May 30, 2012. The claimant participated in the hearing. Dorothy O'Brien, Owner and Ann Pelton, Manager, 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 retail sales associate for Wide River Winery from October 2011 to December 10, 2011. The claimant was hired to supplement the employer's staff during the busy holiday season. On December 2, 2011, the claimant was scheduled to work at the employer's Le Claire location but Manager Ann Pelton was the only employee scheduled at the Clinton location and had to do end of the month bookwork so the claimant was told she needed to report to the Clinton location. The Le Claire site was having a grand opening that the claimant participated in getting ready and she wanted to work there instead of in Clinton. She argued with and complained to Ms. Pelton through text messages for 30 to 45 minutes until Ms. Pelton finally stated it "wasn't worth it" and the claimant did not work at all that day. On Saturday, December 10, 2011, the claimant was scheduled at the employer's North Park location but did not call or show up for work. Saturdays in December are the employer's busiest time of the year. When the claimant did not call or show up Ms. Pelton was notified and called the claimant to ask what happened. The claimant indicated she was confused about her schedule and was not aware she was supposed to work that day. Ms. Pelton stated the claimant knew she had to work because she had given her the schedule but said if she would still come in she could keep her job. The claimant stated it was not worth her time at that point and Ms. Pelton terminated her employment. The claimant then called Owner Dorothy O'Brien crying and told her Ms. Pelton discharged her. She told Ms. O'Brien

she did not know she was scheduled but Ms. O'Brien was skeptical because of the claimant's other call ins. Ms. O'Brien told her if she would come in as soon as possible the employer would give the claimant another chance and she could keep her job but the claimant said it "wasn't worth it." Ms. O'Brien considered the claimant's refusal to be insubordination and she also told the claimant her employment was terminated.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 employer was concerned about the claimant showing a pattern of calling in when she was assigned to any of the two other stores instead of the Le Claire store. Almost every part-time employee was scheduled to work every Saturday in December because it is the employer's busiest time of the year and the claimant knew or should have known she would be expected to work December 10, 2011. Even if the claimant truly did not know she was scheduled December 10, 2011, she refused to come in when given the

chance by Ms. O'Brien, stating it "wasn't worth it." She stated she loved her job yet declined to do the one thing that would have allowed her to keep her job. The employer's request for her to come in when it talked to her December 10, 2011, was not unreasonable given that the employer believed she was already scheduled, it was a very busy day and the claimant professed that she wanted to keep her job. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The April 24, 2012, reference 04, decision is reversed. 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. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css