

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN CONKLIN

Claimant

APPEAL NO. 06A-UI-09985-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCHANT INVESTMENTS INC

Employer

**OC: 09-10-06 R: 02
Claimant: Respondent (1)**

Section 96 5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 2, 2006, 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 October 25, 2006. The claimant participated in the hearing. Shannon Woolley, Director of Operations, 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 full-time in-shop sandwich maker for Jimmy John's Gourmet Sub Shop from October 2005 to September 2, 2006. The claimant primarily worked the day shift. On September 2, 2006, the employer told her it was short-handed for the evening shift and asked if she could work that night if it let her leave at 2:00 p.m. that afternoon. The claimant stated she would not have a ride home that night and the employer told her it would find her a ride if she could work. The claimant agreed to work under those circumstances. However, when she arrived for the evening shift the night manager said she could not give the claimant a ride home, so the claimant called her mother and two friends before finding a friend who could pick her up but had to do so at 8:00 p.m. The night manager called General Manager Dale Anderson about the situation and the claimant spoke to Mr. Anderson, who indicated he had no knowledge of the ride situation and if the claimant left she would no longer be on the schedule, so the claimant believed her employment was terminated. Director of Operations Shannon Woolley testified the employer would have found the claimant a ride home if she called him.

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). The employer promised the claimant a ride home if she agreed to work the evening shift, but when she arrived at work that night the manager indicated she could not give her a ride and did not know anything about the arrangement. The claimant tried to find another ride and was able to do so but had to leave when her friend was available to pick her up from work. She spoke to Mr. Anderson about the situation and he also stated he was not aware the employer was to provide her a ride and she would be off the schedule if she left before the end of her shift. While the employer characterizes the separation as a voluntary quit, the administrative law judge concludes the employer terminated the claimant's employment. The employer promised the claimant a ride home if she worked the evening shift but did not follow through with its commitment and the claimant was forced to find another ride home. The employer then told the claimant she would be off the schedule if she did not stay, but the reason she felt she could not stay was because the employer reneged on its promise to find her a ride home and she had did not have a ride from the employer. Under these circumstances, the employer's failure to follow through with a ride and telling the claimant she would be off the schedule unless she stayed until close

constitutes a termination from employment as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 2, 2006, 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