

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY S HOUSTON**

Claimant

**APPEAL NO: 12A-UI-05222-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUSHWOOD BAR AND GRILL**

Employer

**OC: 04/01/12**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated April 26, 2012, reference 01, that held she was discharged for misconduct on March 31, 2012, and which denied benefits. A telephone hearing was held on May 29, 2012. The claimant participated. Chris Johnson, owner/general manager; Anna Barnts, manager; and Mike Berzinski, manager, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a part-time server on July 22, 2009, and last worked for the employer on March 21, 2012. The claimant was scheduled to start work at 4:00 p.m. on March 19, but she found a replacement to work until 5:00 p.m. Claimant later tried to get a replacement to further delay her work report time, but was dissuaded by the employer. Claimant did attempt to find someone to work for her. Claimant reported for work about 7:30 p.m., but she did not clock in, because after discussing the slow business situation with other servers, it was agreed she would leave.

The employer's general manager/owner discharged claimant after she clocked in on March 21. She was angry and upset that claimant had failed to report to work on time and she had failed to clock in for work. The employer acknowledges that a part-time employee told claimant she could go home, as there was no manager on duty.

**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.

The administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on March 21, 2012, for failing to timely report for work.

The claimant followed policy by getting a replacement worker to delay her work start time. There was a misunderstanding with the employer that followed about claimant's further effort to delay her start time with another worker. Claimant did report at 7:30 p.m. Since business was slow, she agreed with the other servers she would leave, which is a good cause for not clocking in.

While claimant was late in reporting for work on March 19, she otherwise had a good reason for leaving without clocking in due to a slow business situation, which does not constitute job-disqualifying misconduct in the absence of any written warning for the same issue.

**DECISION:**

The department decision dated April 26, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on March 21, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw