

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOIS J LLOYD
Claimant

APPEAL NO. 09A-UI-04109-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPREHENSIVE SYSTEMS INC
Employer

**Original Claim: 02-01-09
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 11, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 9, 2009. The claimant did participate. The employer did participate through Shari Toebe, HCBS Manager, and (representative) Sheryl Heyenga, Program Director. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a direct care support staff, full-time, beginning October 11, 2002, through February 2, 2009, when she was discharged.

The claimant was to work from noon to midnight on January 31, 2009. She called in sick that morning at 8:00 a.m. and reported that she was too ill to work. She reported that she was in Algona taking care of her sick uncle and had become ill and was unable to get back to Mason City. The claimant was seen at the casino in Northwood at approximately 8:00 p.m. that same evening. The claimant should have been working at 8:00 p.m., as her shift was until midnight. At hearing, the claimant initially testified that she stopped at the Casino in Northwood on her way back from Algona after spending the night in her car and at the Hy-Vee there. The casino at Northwood is not on the way from Algona to Mason City. She later changed her testimony to indicate that she had gone home from Algona the morning of January 31 and slept for a number of hours then got up and drove twenty-four miles to the casino in Northwood to eat dinner.

The employer's policy requires that all employees be honest with the employer and provides that dishonesty can lead to discharge. The claimant had been suspended for three days in July 2008 and was warned at that time that any further infractions could lead to her discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 claimant changed her testimony at the hearing to indicate first that she stopped at the casino on her way back from Algona and then to indicate that she went to the casino from her home after having slept for a few hours. The claimant's inconsistencies in her testimony make her not a credible witness. The claimant called in sick for her shift and was seen later at a casino in apparent good health with no issues. The claimant was required to be honest with the employer. Her allegation that she had only called in sick on two other occasions does not mean she is not obligated to be honest and truthful when calling in sick. The administrative law judge is not persuaded due to the claimant's lack of credibility that she was actually sick on January 31, 2009, particularly since she was well enough to drive twenty-four miles to spend time in a casino. The claimant's actions amount to a disregard of the employer's best interests and are misconduct sufficient to disqualify her from receipt of benefits. Benefits are denied.

DECISION:

The March 11, 2009, reference 01, decision is affirmed. 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw