

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-09911-SWT
OC: 08/08/04 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated, September 8, 2004, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on October 5, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, James Howell. Nancy Tripp participated in the hearing on behalf of the employer. Exhibits A and B were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a machine technician from February 24, 1999, to August 19, 2004. Brad Hyden was the department supervisor. Nancy Tripp is the human resources director.

On August 13, 2004, the claimant was scheduled to work from 7:00 a.m. to 7:00 p.m. because she was to work mandatory overtime. The claimant left work at 1:24 p.m. after getting permission from her supervisor to leave because she said she felt ill.

Later that day, Tripp was informed that the claimant could probably be found at a Joe's Inn, a local bar. Tripp and Hyden went to the bar at 3:38 p.m. The claimant was in the bar with her boyfriend, James Howell. Howell also works for the employer. The claimant was sitting in a chair at the bar playing a video game and drinking a beer. Tripp and Hyden saw the claimant at the bar playing a video game. Howell saw Tripp and Hyden in the bar and saw Tripp looking at the claimant.

Soon after Tripp and Hyden left the bar, Howell told the claimant about seeing Tripp and Hyden in the bar. At that point, the claimant and Howell went to the doctor's office without an appointment and her Dilantin level was checked to make sure her seizure disorder was under control. Her doctor provided her with an excuse stating he had seen her on August 13 and she was released to return to work on August 16. The claimant called in sick on August 14. When she returned to work on August 16, she was suspended because she had went to a bar when she should have been at work.

When Tripp questioned the claimant about the incident on August 17, she admitted to being in the bar and having a beer there. She insisted she had stopped there for only five or ten minutes while she and Howell were on their way to a scheduled appointment with her doctor. When Tripp called the doctor's office, one of the staff said the claimant walked into the clinic without an appointment. The employer then discharged the claimant on August 19, 2004, for going to a bar and drinking beer during hours that she was scheduled to work after she had left work early due to illness.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's evidence was conflicting. She told the employer she had an appointment to see her doctor, but the employer called the doctor and discovered she had walked in without an appointment. The fact that the doctor accepts patients without appointments or that the claimant often comes in for testing without an appointment does not change this contradiction. The claimant told Tripp that she "had a beer," but during the hearing stated that she did not drink the beer she had. This is not credible. If she had not consumed the beer, she would have told Tripp that in the first place. Finally, the claimant testified that Howell did not tell her anything about seeing Tripp and Hyden until they were home after the doctor's visit. Howell testified he was "pretty sure" that he did not tell the claimant about Tripp and Hyden being in the bar until they left the doctor's office. While Howell's testimony could be stretched to cover him telling her after they got home, in my judgment, the testimony is inconsistent. It is implausible that Howell would not tell her immediately that he saw the human resource director and the department head from work in the bar, especially since he observed the human resource director standing directly behind the claimant for a few seconds.

The claimant's conduct in being in a bar drinking beer during her scheduled hours of work after she had left work early due to illness was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated September 8, 2004, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/pjs