

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOLINDA L RILEY**  
Claimant

**APPEAL NO. 07A-UI-09502-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOHNSON BROTHERS OF IOWA INC**  
Employer

**OC: 09/02/07 R: 02  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Johnson Brothers, filed an appeal from a decision dated September 27, 2007, reference 01. The decision allowed benefits to the claimant, Jolinda Riley. After due notice was issued a hearing was held by telephone conference call on October 23, 2007. The claimant participated on her own behalf. The employer participated by Operations Manager Gary Verwers.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Jolinda Riley was employed by Johnson Brothers from September 19, 2005 until September 4, 2007, as a full-time warehouse worker. The employees were notified August 26, 2007, mandatory overtime would be in effect for Saturday, September 1, 2007.

The claimant was scheduled to arrive at work on September 1, 2007, at 8:00 a.m. She brought a co-worker to work at 8:30 a.m. but never called to say she would be late. Instead of coming in to work Ms. Riley turned around and went home. She finally did arrive at work at 10:57 a.m. At 11:30 a.m. Operations Manager Gary Verwers bought lunch for the workers and was setting it up in the kitchen where he found Ms. Riley lying down on one of the booths. She said nothing to him at that time but left the work place without notifying him or her direct supervisor John Bevqulaia.

Ms. Riley did call her supervisor on Labor Day, September 3, 2007, to find how “how much trouble” she was in and he said he was not sure. On that basis the claimant came to work on September 4, 2007, at which time Mr. Verwers told her she was considered to have abandoned her job on September 1, 2007. At that point she acknowledged she had been drinking Friday night and into Saturday morning and was not feeling well as a result. She offered no

explanation for failing to call in and report her tardiness, her late arrival or her departure to any member of management.

Jolinda Riley has received unemployment benefits since filing a claim with an effective date of September 2, 2007.

### **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 claimant was discharged but not for a single instance of unexcused absenteeism. The events of September 1, 2007, were a series of profound disregard for her duties and obligations as an employee. She elected to drink to excess mere hours before she was to report to work. Although she was capable of driving a co-worker to work, she maintained she was not well enough to pick up the phone and call her supervisor to report she would be tardy. Instead of coming into the workplace at 8:30 a.m. when she dropped off her co-worker, she merely turned around and went home for another two hours, again without reporting to a supervisor, and finally appeared for work three hours late.

While illness is generally something beyond the control of an individual, this was not an illness but excessive alcohol consumption which is entirely within her control. She not only put herself in this condition, she did not report for work or call in, and does not have any reasonable excuse for having done so. Nor does she have any explanation whatsoever for failing to notify her

employer she was not feeling well and wanted to go home, even though she was face to face with the operations manager mere minutes before leaving the workplace without permission. This is insubordination, unexcused absenteeism, and disregard for her duties and obligations as an employee. It constitutes conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of September 27, 2007, reference 01, is reversed. Jolinda Riley is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$651.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs