

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANNE D SHEARON
Claimant

APPEAL NO. 13A-UI-02302-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOKITA INC
Employer

OC: 01/20/13
Claimant: Appellant (2)

Section 96.5(1) – Quit
Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Dianne Shearon, filed an appeal from a decision dated February 18, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 25, 2013. The claimant participated on her own behalf and was represented by Kristine Tidgren. The employer, Jokita, participated by Owner Betty McCorkle.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer or was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Dianne Shearon was employed by Jokita from May 2005 until January 21, 2013 as a part-time waitress working 11:00 a.m. to 2:00 p.m. Monday through Friday. In December 2012 she notified Owner Betty McCorkle she was going on vacation January 14 through 18, 2013. The company policy requires an employee to find their own replacement for any missed shifts.

In mid-December the claimant asked Linda to substitute but she was going to be gone during that same time and could not. She then asked Sharon who agreed but said she was applying for another job and if she got that job she would be working 8:00 a.m. to 2:00 p.m. and would not be able to substitute. Sharon notified Ms. Shearon on December 24, 2012, she had gotten the job and would not be able to substitute. The claimant then asked Casey who agreed to work the lunch hours.

When Ms. Shearon notified Ms. McCorkle of the substitute the owner rejected it because Casey was a cook and did not have any experience as a waitress. The employer then said she would get her sister, Cindy, to substitute. When Ms. Shearon returned from her vacation on January 21, 2013, she was informed by Ms. McCorkle she had been replaced.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The record does not establish the claimant quit. She went on vacation, and believed in good faith a substitute had been found for her shifts.

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 by the employer because she was on a pre-approved vacation. It was apparently a misunderstanding about the substitutes for the shifts that caused the employer to believe they had not been covered. Ms. Shearon had made a diligent effort to find substitutes and believed the employer had made arrangements for Cindy to cover them. The record does not establish any willful or deliberate misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of February 18, 2013, reference 01, is reversed. Dianne Shearon is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css