

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOREEN SANFRATELLO
Claimant

APPEAL NO. 09A-UI-02546-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHUEY'S RESTAURANT AND LOUNGE LLC
Employer

**Original Claim: 01/04/09
Claimant: Respondent (1)**

Section 96.4(3) – Able and Available
Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Shuey's Restaurant and Lounge LLC (Shuey's), filed an appeal from a decision dated February 9, 2009, reference 01. The decision allowed benefits to the claimant, Doreen Sanfratello. After due notice was issued, a hearing was held by telephone conference call on March 13, 2009. The claimant participated on her own behalf. The employer participated by Co-Owner Jeanetta Williams.

ISSUE:

The issue is whether the claimant is able and available for work and whether she was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Doreen Sanfratello was employed by Shuey's from March 24, 2008 until January 29, 2009. At the time of separation she was a part-time prep cook. Ms. Sanfratello had been hired as a full-time kitchen manager but was demoted to part-time prep cook in October 2008. She consented to the demotion and the reduced hours and wages. However, those hours were cut even further during a slow time at the beginning of the year when she filed her claim for benefits.

On January 22, 2009, she left at the end of her shift at 3:00 p.m. and told the bartender, Ellen Hemple, she would not be in the next day because she was not feeling well. Ms. Hemple was not specifically asked to relay the information to Co-Owners Jeanetta Williams and Terry Ely, and she did not. Ms. Sanfratello could have called later in the evening to notify the co-owners but she did not.

The next day the claimant was scheduled to work was January 29, 2009, at which time Mr. Ely discharged her for being no-call/no-show to work on January 23, 2009.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant's hours had been reduced due to a slow down in the business. She remained available to work more hours had she been scheduled for them and is therefore eligible for benefits.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant was discharged for being no-call/no-show to work for one shift. Ms. Sanfratello did not take the prudent course of action and notify the owners of her absence, but left it to the bartender to relay the information. While this is poor judgment on the part of the claimant, there is no specific evidence she was ever informed absences were to be reported only to the owners and no one else. This may be an unexcused absence, as it was not properly reported, see Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982), but one absence cannot be considered excessive. Only excessive, unexcused absenteeism is misconduct under the provisions of the above Administrative Code section. The employer has failed to meet its burden of proof to establish the claimant was discharged for misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of February 9, 2009, reference 01, is affirmed. Doreen Sanfratello is qualified for benefits provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw