

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROL J METTLER**  
Claimant

**APPEAL NO. 10A-UI-04142-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JONES COUNTY**  
Employer

**Original Claim: 02/14/10  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated March 9, 2010, reference 01, that held the claimant was not discharged for misconduct on February 4, 2010, and that allowed benefits. A telephone hearing was held on May 3, 2010. The claimant participated. Lisa Tallman, Senior Center Director, participated for the employer. Employer Exhibits 1 through 7 were received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on July 9, 2008, and last worked for the employer as a full-time kitchen supervisor on November 5, 2009. The claimant had been missing work due to back trouble. The claimant called Director Tallman at her home on November 29 to say she would miss work on November 30, and December 1, as she was having continuing back problems.

Tallman and the claimant had a conference on the morning of December 2. Tallman told the claimant she needed to have a doctor's release to come back to work. Claimant called Tallman at home on the evening of December 3 to state she had a doctor's appointment for December 7, and Tallman replied she could get her paycheck the next day. When the claimant came in to get her check, she was told her employment was terminated. The employer considered the claimant had quit her employment due to job abandonment as a no-call, no-show to work on December 2 and 3.

**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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on December 4, 2009.

The claimant was not a no-call, no-show to work on December 2, and she was told to not to return to work without a doctor's release. The employer's decision to terminate the claimant on December 4 is a discharge (not a voluntary quit) without misconduct, as the claimant had properly reported her absences due to health issues.

**DECISION:**

The department decision dated March 9, 2010, reference 01, is affirmed. The claimant did not voluntarily quit, but was discharged for no misconduct on December 4, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw