

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH A FORD
Claimant

APPEAL NO. 10A-UI-14622-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

**OC: 09/19/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 12, 2010, reference 02, that concluded she had voluntarily left employment without good cause attributable to the employer. A telephone hearing was held on December 10, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Shannon Hagensten participated in the hearing on behalf of the employer. This is duplicate decision to the decision in appeal 10A-UI-14621-SWT issued because for some unknown reason the Agency issued two decisions involving the same employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time as a dishwasher for the employer from August 27, 2006, to July 22, 2010. She was informed and understood that under the employer's work rules, employees were required to notify the employer for the start of their shift if they were not able to work as scheduled and were subject to discharge after three absences without notice to the employer.

The claimant was absent from work on July 23, July 28, July 29, August 2, and August 3, 2010. The reason for her absence was she was in jail after being arrested for burglary. This was result of the claimant getting involved in a fight at someone's residence and entering the home without permission. She was unable to post the bail necessary to be released from jail right away. The claimant used the phone call the jail allowed to contact a friend who also works for the employer. She asked a friend to notify her supervisor that she was in jail and unable to report to work.

The employer considered the claimant to be absent without proper notice, as required by the employer's work rules, from July 23 to August 3, 2010. On August 6, 2010, the employment coordinator sent a letter to her informing her that she was discharged due to her unreported absences.

REASONING AND CONCLUSIONS OF LAW:

I cannot conclude that the claimant quit her job based on the evidence presented. The evidence shows the claimant was discharged. The issue in this case then is whether she was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides: "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."

Absences due to being arrested and lodged in jail are not excused, because the claimant's own conduct led to her arrest and jailing. Additionally, although the claimant could only make one initial phone call from jail, I do not believe she took all reasonable steps to keep the employer fully informed while was incarcerated. She could have written a letter to her supervisor personally communicating what happened and her intention to return to work. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated October 12, 2010, reference 02, 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw