

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**SAMMI JO SMITH**  
Claimant

**APPLE CORPS L P**  
Employer

**APPEAL NO. 18A-UI-09614-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/01/18**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated September 10, 2018, reference 04, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 3, 2018. Claimant participated personally and with witness Marlana Meyers. Employer failed to respond to the hearing notice and did not participate.

**ISSUES:**

Whether claimant was discharged for misconduct?

Whether the claimant is disqualified from the receipt of unemployment insurance benefits due to a job separation based on claimant's incarceration?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: As claimant and her witness were the only witnesses at the hearing, all findings of fact are derived from their testimony. Claimant last worked for employer on May 13, 2018. Employer discharged claimant on May 22, 2018 because claimant was not present for her scheduled shifts on May 18, 19, or 20, 2018. Claimant was incarcerated on May 22, 2018 after conviction for an OWI. Claimant had a friend and co-worker go to the Applebee's manager and explain before claimant's next shift that claimant was going to be gone at least three days while in custody before she might be able to get work release. (Claimant stated that she was told by the judge at the time of sentencing that she was to get work release, but the original court order didn't state that claimant was to receive work release.) Claimant's friend then offered to work two of the minimum of three days that claimant was to miss. Said offer was accepted by employer. The friend could not work the third day as she was already scheduled to work, but employer stated that employer would work it out.

Claimant called employer on May 22, 2018 after she'd had her original order amended to include the work release verbiage. Employer terminated claimant for being a no-call/no-show for work on the dates of May 18 through May 20.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Code section 96.5(11)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

11. *Incarceration –disqualified.*

a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds all of the following:

(1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.

(3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.

(4) The employer rejected the individual's offer of services.

b. A disqualification under this subsection shall continue 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.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

Iowa Code § 96.5(11) has set out four steps that would allow a person arrested and put in jail to still be eligible to receive unemployment benefits. (1) The individual must notify the employer that the individual would be absent prior to her absences. Claimant in this matter did notify employer of her absences prior to them occurring. She satisfied this requirement. (3) The individual reported back to the employer within two days of her release from incarceration. Claimant satisfied this requirement through her call to employer on May 22, 2018. (4) The employer rejected claimant's offer of services. Claimant testified that she offered to come back to work on May 22, 2018 and employer told her that she'd been terminated. Claimant satisfied this requirement. (4) Criminal charges related to the incarceration were not filed against the individual, all criminal charges relating to the incarceration were dismissed, or the individual was found not guilty of the criminal charges. This requirement was not satisfied by claimant who was found guilty of OWI and was sentenced to 42 days in jail as a result of her guilty plea.

Whereas proper notification may often be a way for claimants to avoid a disqualification from the receipt of unemployment benefits, such doesn't apply to people convicted of crimes. The Iowa Code has specifically created the four steps necessary for a claimant to be eligible to receive benefits after incarceration. Claimant didn't satisfy each of the necessary steps.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning absenteeism. The last incident, which brought about the discharge, constitutes misconduct because the Iowa Code defines the incarceration as misconduct absent steps that claimant was not able to successfully complete. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated September 10, 2018, reference 04, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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