

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER A TOYNE
Claimant

APPEAL NO. 13A-UI-13165-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACKERMAN INVESTMENT CO
Employer

OC: 11/03/13
Claimant: Appellant (1)

Section 96.5-2-a - Discharge
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 25, 2013, reference 05, decision that denied benefits. A telephone hearing was scheduled for December 18, 2013. The claimant, the appellant herein, did not respond to the notice of hearing by providing a telephone number to be called at the time of hearing. The employer participated by Mr. Joe Jordison, General Manager. Ms. Toyne called in late on the afternoon of December 18, 2013. The claimant had not been available to participate in the hearing because she had not read the hearing instructions requiring her to submit a telephone number and because the claimant was attending a job interview at the time although she had not requested a postponement of the hearing in this matter. These are not considered to be good cause reasons to reopen the completed hearing. Based upon the appellant's failure to participate in the hearing, the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

At issue in this matter is whether the decision previously entered should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number at which she could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed.

Heather Toyne was employed by the captioned employer d/b/a Quality Inns & Suites from August 8, 2013 until November 5, 2013 when she was discharged from employment. Ms. Toyne held the position of part-time bartender/banquet server and was paid by the hour.

Her immediate supervisor was Joe Jordison. Ms. Toyne was discharged based upon events that took place on November 1 and November 2, 2013. On November 1, 2013, the claimant reported to work without wearing the proper work clothing and was sent home to change clothes. Ms. Toyne was to return to work that day but did not do so. Subsequently, it was determined that the claimant had been punched out later that day making it appear that she had been at work. When questioned about the matter the following day, Ms. Toyne became angry and threw an object while being questioned by the general manager whereupon the claimant was discharged from employment.

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.

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the

employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The administrative law judge has carefully reviewed the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed.

The claimant was discharged after she did not return to work on November 1, 2013 as instructed and engaged in insubordinate behavior when questioned the following day about how she had punched out at a later time on November 1, 2013 without returning to the facility.

DECISION:

The unemployment insurance decision dated November 25, 2013, reference 05, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect. The claimant has not established good cause to reopen the record because the claimant did not read the hearing notice provided to her and did not provide a telephone number or request a postponement for the scheduled hearing. The decision will become final unless an appeal is filed with the Employment Appeal Board within 15 days of the date of this decision.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs