

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHRYN J GEORGE**  
Claimant

**APPEAL NO. 07A-UI-02075-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMBINED CANDY & SNACK LLC**  
**SHAEKESPEARE'S**  
Employer

**OC: 02-05-06 R: 04**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.5(2)a – Suspension/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 14, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 19, 2007. The claimant did participate. The employer did participate through Mary Bisinger, Administrative Assistant and (representative) Alisa Shakespeare, President. Employer's Exhibit One was received. Claimant's Exhibit A was received.

**ISSUES:**

Was the claimant discharged for work-related misconduct or did she voluntarily quit her employment without good cause attributable to the employer?

Was the claimant suspended for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a factory manager/supervisor full-time beginning September 1, 2003 through January 29, 2007, when she was discharged.

The claimant was discharged when she failed to return to work after a two-week suspension. The claimant was suspended for poor work performance and attendance issues on January 15, 2007. The claimant was to return to work on January 29, 2007.

The claimant left work early on January 8 and 9 because she was ill. On January 10, 11, and 12, she called in and to leave to care for her ill children. The claimant's boyfriend provided daycare for her children but he was unable to care for all of the children alone while they were ill. When calling in sick for herself or for her children, the claimant properly reported her illness to the appropriate phone number in the shop.

At 8:00 p.m. on January 29, 2007, the claimant left a message on her employer's cell phone. The claimant alleges that she was unsure when she was to return to work after her suspension. The claimant knew how to reach her employer at the shop but made no effort to discover when she was to return to work by calling for information. Additionally, the claimant went to the workplace on January 26, 2007 to pick up her paycheck. At that time she could have inquired about her return to work date, but she did not.

The claimant was suspended not only for poor attendance but also for poor work performance. The claimant was not insuring that packaging was being done correctly. A razor blade had been discovered in a package of the product. When the rest of the packages were sent to be x-rayed and weighed to determine if they had been tampered with, the employer discovered that the weight on the packages was incorrect and that they had to be repackaged. The repackaging and reweighing cost the employer a substantial sum of money. The claimant had not been insuring that the packages were weighed and packed correctly as was part of her responsibility. The claimant was also taking extended breaks that were not allowed by the employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment for misconduct.

Iowa Code § 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(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

An employer's no fault attendance policy is not dispositive of the issue of whether the claimant is entitled to unemployment insurance benefits. Absences related to lack of childcare are generally held to be unexcused. *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Technology, Inc.*, 465 N.W.2d 721 (Minn. App. 1991). The claimant had live-in childcare for her children. She did not establish that there was any medical necessity for her staying home with her children. The children did not require medical attention as the claimant did not have a doctor's note for those absences.

Additionally, she was suspended for her failure to insure that product was weighed and packaged correctly. The employer has established that the claimant was suspended for misconduct.

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 claimant failed to return to work after a suspension. The administrative law judge is not persuaded that the claimant was unsure about when she was to return to work after her suspension. The claimant was in the shop to pick up her paycheck and could have inquired as to her return to work date then, or she could have called at any time. The claimant failed to return to work after her suspension which is sufficient misconduct to disqualify her from receiving unemployment insurance benefits. Benefits are denied.

**DECISION:**

The February 14, 2007, reference 01, decision is affirmed. The claimant was suspended from employment for misconduct. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages

for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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