

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LESLIE C WOODARD**  
Claimant

**APPEAL NO. 13A-UI-02381-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPLE CORPS LP**  
Employer

**OC: 01/13/13**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able to and Available for Work  
Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated February 21, 2013, reference 01, that concluded the claimant was not able to and available for work. A telephone hearing was held on March 26, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Deacon Gardner participated in the hearing on behalf of the employer. The parties agreed that the issue of whether the claimant was disqualified from receiving benefits based on the reasons for her separation from employment could be decided in this case.

**ISSUES:**

Was the claimant able to and available for work?  
Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked part time for the employer as a server, host, and food expediter from May 10, 2012, to February 13, 2012. She was told that her hours would vary and was not promised any certain number of scheduled hours per week. She did pick up additional shifts at times that boosted her hours to close to full time. When she worked as a server she received tips and longer hours.

Effective January 13, 2013, the claimant filed for unemployment insurance benefits because she was not working close to 40 hours per week and worked more shifts as a host or food expediter, which were shorter shifts and untipped positions. During this time, the claimant was also caring for her mother who had medical issues. As a result, the claimant missed some shifts or traded shifts with other employees. She was also late for work at times due to her mother's health problems and other issues.

The claimant received warnings after reporting to work late on May 27, 2012 and January 14, 2013; and for an absence due to weather on January 30, 2013. The claimant had a performance review on February 11, 2013, during which her supervisor reviewed her

attendance issues. She was informed that she could be terminated if she was late or absent again.

On her next scheduled day of work, which was February 13, the claimant overslept and failed to report to work as scheduled. She called in about a half hour after her start time. Her supervisor informed her that she was discharged.

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

The first issue is whether the claimant was eligible for partial unemployment insurance benefits effective

Iowa Code § 96.19-38-b provides: "An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars."

871 IAC 24.23(26) provides: "Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed."

She was hired to work part time with no guarantee as to the number of hours she would work each week. She also admitted that after she filed for unemployment insurance benefits, there were times when she missed shifts to care for her mother. Her wages were also not accurately reported because she did not report her tips. The evidence fails to show the claimant was eligible for partial unemployment insurance benefits.

As of February 13, 2013, the claimant's employment was terminated. The next issue then is whether the claimant 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).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7). The claimant had received repeated warnings about absenteeism. She received a final warning regarding this during her performance review. Two days later she failed to report to work as scheduled due to oversleeping, which is not an excused reason for being late or absent. Work-connected misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated February 21, 2013, reference 01, is affirmed. The claimant was not eligible for partial unemployment insurance benefits effective January 13, 2013. The claimant is disqualified from receiving unemployment insurance benefits effective February 13, 2013, until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs