

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LA FOY C GAINES
Claimant

APPEAL NO. 11A-UI-08861-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HAMBY ENTERPRISES INC
PUMP IT UP OF URBANDALE**
Employer

**OC: 06-05-11
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 1, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 17, 2011 at Des Moines, Iowa. The claimant did participate. Present with the claimant were his witnesses Marion Rife and Cynthia Gaines. The employer did participate through Marcia Hamby, President and Owner. Claimant's Exhibit A was entered and received into the record. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a party attendant and party coordinator part time beginning December 3, 2010 through April 9, 2011 when he was discharged. The claimant requested March 19 off to attend and be part of the wedding of his sister. His request was properly made on March 4 and was approved. The wedding date was subsequently changed on March 17 and moved to April 9. The claimant did not request the date of April 9 off through the e-mail system until March 23, 2011. On every single other occasion when the claimant wanted time off he had used the e-mail system to request time off. The employer never verbally granted the claimant time off on March 17 for the April 9 wedding. The employer has 28 employees and each of those employees is required to submit time off requests through the e-mail system. The system documents when each request is submitted. Only three employees are allowed to have time off during any one work shift due to the nature of the employer's business. When the claimant finally asked for April 9 off three other employees had already been granted time off so his request was denied. All employees were responsible for checking their own work schedule. The work schedule that included April 9 was e-mailed out on March 31. The schedule indicated that the claimant was on-call on April 9. Being on call meant that he was required to report to work within 15 minutes of being called to do so. The claimant managed to use the employer's e-mail system to send in time off requests despite his indication that he had no access to the

system. The claimant was called to report to work on April 9 when at least one other employee did not show up. It was not up to the claimant to decide when the employer could or could not call him into work. The claimant refused to come into work because he was participating in a wedding. The claimant could have at least attempted to find another employee to cover for him. The employer's policy is that "three strikes" or policy violations and an employee is discharged. The claimant had received two prior disciplinary actions so was discharged when he did not report for work on April 9 or find a replacement.

REASONING AND CONCLUSIONS OF LAW:

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The employer had a set procedure for how time-off requests were to be made. In the past the claimant had demonstrated an ability to regularly and routinely comply with the procedure. It was not up to the claimant to decide if he was obligated to follow the procedure or not. The claimant failed to ask for the new wedding day off when the wedding date was changed. It was not the employer's responsibility to automatically change the date of claimant's time off when the claimant's planned changed. Similarly, the employer was under no obligation to waive the work

rules or the procedure because of the claimant's prior job performance. The claimant simply failed to follow the policy and was not granted the time off. He knew or should have known his own work schedule. It was not the employer's responsibility to work around the claimant's personal schedule. The claimant had prior warnings and under the employer's policy his last absence was not excused and was sufficient work connected misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The July 1, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs