

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBIE J MAYNARD
Claimant

APPEAL NO. 07A-UI-06045-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCSOIFERS INC
Employer

**OC: 05/27/07 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, McSoifer's, filed an appeal from a decision dated June 12, 2007, reference 01. The decision allowed benefits to the claimant, Bobbie Maynard. After due notice was issued, a hearing was held by telephone conference call on July 3, 2007. The claimant participated on her own behalf. The employer participated by Manager Scott Soifer.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Bobbie Maynard was employed by McSoifer's from August 25, 2005 until May 29, 2007, as a full-time swing manager. She was scheduled May 24, 2007, from 4:00 p.m. until 1:00 a.m., and at the end of that shift left a note for the day manager to say she was sick and would not be able to work her shift on May 25, 2007, from 4:00 p.m. until midnight. The claimant knew in advance she would not be able to work the next day because her medical problem was excessive menstrual bleeding. From past experience, she was aware it would not abate for some time. She did go to the doctor during the day on May 25, 2007, and was told to "take it easy," as physical work and stress would cause the bleeding to continue. She did not ask the doctor for a medical excuse.

On May 29, 2007, the claimant's next scheduled day of work, Manager Scott Soifer met with her and asked why he should not fire her, because he considered her to be a no-call/no-show to work on May 25, 2007, in spite of having left the note. She said she had been considering looking for another job and at that point the employer decided to discharge her because he felt she lacked the necessary dedication to her job.

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.

From the testimony of the employer the claimant's final, precipitating act, which caused her discharge, was not being absent on May 25, 2007, but for admitting she had considered looking for another job. While this may be true, Mr. Soifer did not point to any particular conduct of the claimant that was detrimental to the employer's interests. Her absence from work for her scheduled shift on May 25, 2007, was properly reported and the employer did not have a problem replacing her, as she gave plenty of notice. The fact she knew well in advance she would not be able to work has been explained and the employer did not dispute it.

The record establishes the claimant was not discharged for any misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of June 12, 2007, reference 01, is affirmed. Bobbie Maynard is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw

