

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL D NONG
Claimant

APPEAL NO. 07A-UI-09614-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUNN-O-MATIC CORPORATION
Employer

**OC: 09/23/07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

April D. Nong (claimant) appealed a representative's October 12, 2007 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Bunn-O-Matic Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 30, 2007. The claimant participated in the hearing. Richard Fries appeared on the employer's behalf and presented testimony from one other witness, Jane Mahan. During the hearing, Employer's Exhibit A was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on November 20, 2006. She worked full time as a production assembly worker in the employer's manufacturing business. Her last day of work was September 25, 2007. The employer discharged her on September 27, 2007. The reason asserted for the discharge was excessive absenteeism.

Prior to September 21, 2007 the claimant had eight absence occurrences, including four which were for illness and four which were for personal business. As a result, the claimant had been given a verbal warning for attendance on May 9, 2007, a written warning on June 26, 2007, and a three-day suspension on July 23, 2007.

The claimant called in an absence for personal reasons on September 21, 2007; she had received a call that her grandmother, who lived approximately 40 miles away, was in rapidly failing health and so went to be with her and other family. The claimant's grandmother passed away on September 23. The claimant called in an absence for personal reasons on September 24; she was assisting her mother and other family members in making funeral

arrangements for her grandmother. She spoke to Mr. Fries that day and requested a five-day leave of absence to deal with family issues. He informed her that due to her prior absences, a five-day leave of absence could not be allowed, that she needed to be at work on September 25 or she would face discharge, however, she would be allowed off on September 26 for the day of the funeral itself.

The claimant did report in at her scheduled shift start time of 7:00 a.m. on September 25. She spoke with her supervisor, Ms. Mahan, and again requested to be off work that day also to be with her family. Ms. Mahan inquired of the claimant what family duties were remaining, and the claimant responded that the arrangements were already made, but that she felt she should be with her mother in particular as her mother was feeling very upset about her mother's passing. Ms. Mahan responded that work was very busy right then and the employer could not afford to have the claimant be gone for something less than an emergency situation, and that the claimant therefore needed to stay and work that day. Ms. Mahan and the claimant then went about their business; however, the claimant decided after being at work at approximately a half an hour that it was more important for her to be with her mother and other family, and left the facility without clocking out or notifying anyone of her decision.

The claimant contacted the employer on September 27 to learn if she still had a job, and she was informed she did not. The claimant established an unemployment insurance benefit year effective September 23, 2007.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. 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.

Absences due to issues that are of purely personal responsibility are not excusable. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984); Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The claimant's final absence was not excused and was not due to illness or other reasonable grounds outside her control. The claimant had previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's October 12, 2007 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of September 23, 2007. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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