

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

SHALYNE R BERRY  
1335 - 13<sup>TH</sup> PL  
DES MOINES IA 50314

FLYING J INC  
EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000

Appeal Number: 06A-UI-00355-SWT  
OC: 11/27/05 R: 02  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 6, 2006, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on January 26, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Kevin Rafferty participated in the hearing on behalf of the employer with witnesses, Gail Anderson and Kevin Moninsky. Exhibits One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer as a line cook from June 2005 to November 26, 2005. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

In early November 2005, the claimant had visited with her general manager, Kevin Moninsky, and the assistant manager, Gail Anderson, about taking Sundays and Mondays off because she needed to care for her sister in Des Moines who was ill. They agreed that they would try not to schedule her on Sundays and Mondays.

In mid November 2005, the claimant notified the employer that she intended to quit employment effective December 3, 2005, because she was moving to Des Moines. She had requested to be transferred to the employer's truck stop in the Des Moines area but the transfer request had not been approved as of the time she was discharged.

The claimant was scheduled to work on November 22, 23 and 24. She called in sick each day. The claimant worked on November 25 and 26. She was off work on Sunday, November 27. She was on the schedule to work Monday, November 28, starting at 10:00 p.m. and ending at 6:00 a.m. on Tuesday, November 29. The schedule was posted on about November 24. The claimant failed to report to work or call in on November 28, 2005.

The claimant was still in Des Moines on the morning of November 29. Anderson called and spoke with the claimant's daughter early that morning and told her that her mother had missed her shift the night before. Her daughter called the claimant and informed her about Anderson's call. When she called Anderson back, Anderson told her that she need to call Moninsky. She talked to Moninsky later in the day and was informed that she was discharged for being absent without notice.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified that Moninsky had given her November 28 off work when she talked to him on Saturday, November 26. Moninsky denied having such a conversation on November 26 and testified that the situation the claimant described had happened in a previous week. Moninsky's testimony on this point is more credible than the claimant's testimony.

The claimant's violation of a known work rule requiring her to call in if she was going to be absent from work was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

#### DECISION:

The unemployment insurance decision dated January 6, 2006, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/pjs