

**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**

**PATTY A ROBINSON
228 – 340TH ST
KEOKUK IA 52632**

**KEOKUK COMMUNITY SCHOOL DISTRICT
727 WASHINGTON ST
KEOKUK IA 52632**

**Appeal Number: 05A-UI-05844-HT
OC: 05/08/05 R: 04
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Patty Robinson, filed an appeal from a decision dated May 24, 2005, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 21, 2005. The claimant participated on her own behalf. The employer, Keokuk Community School District (Keokuk), participated by High School Manager Denise Estrada and Administrative Assistant Carol Matthews.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Patty Robinson was employed by Keokuk from

October 20, 2004, until May 6, 2005. She was a part-time cook. During the course of her employment, the claimant missed a lot of work. From the date of hire until February 20, 2005, she was gone a total of 16 days. She was counseled by High School Manager Denise Estrada and Connie Houser about her attendance on that day. She was advised her job was in jeopardy.

On May 4, 2005, Ms. Robinson was scheduled to work 4:30 p.m. until 7:00 p.m. She did not appear for work and did not call in until around 5:00 p.m. At that time she called Ms. Estrada's cell phone and explained she had "fucked up" on her schedule. She said she would come in for the rest of her shift but did not appear. She indicated she was having "personal problems" but did not elaborate on what those problems were.

Ms. Estrada consulted with the administrators and the decision was made to discharge the claimant for absenteeism. She was informed by phone by the manager on May 6, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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).

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.

The claimant had been advised her job was in jeopardy as a result of her absenteeism. In spite of the warning, she continued to miss work for vague reasons such as “personal problems” and failed to properly notify the employer prior to the start of the shift. Matters of purely personal consideration are not considered excused absences. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative’s decision of May 24, 2005, reference 01, is affirmed. Patty Robinson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjw