

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY C LONG
Claimant

DLS MANAGEMENT CORP
Employer

APPEAL NO: 11A-UI-14467-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/18/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(5) – Trial Employment Period

STATEMENT OF THE CASE:

The employer appealed a department decision dated October 26, 2011, reference 03, that held the claimant was not discharged for misconduct on September 4, 2011, and benefits are allowed. A telephone hearing was held on December 1, 2011. The claimant participated. Don Sheedy, Owner, participated for the employer.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony, and having considered the evidence in the record, finds: The claimant worked for the employer as a part-time server beginning August 22, 2011. She was hired on a 90-day probationary basis. The employer terminated claimant's employment on September 4, because she was unable to grasp her job duties during the trial period of employment. He told claimant she was not working fast enough for the business.

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(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

The administrative law judge concludes that the employer failed to establish claimant was discharged for misconduct in connection with employment on September 4, 2011.

The claimant worked a very brief period of employment and she was paid wages for that time. Letting an employment go due to an unsatisfactory work performance during a probationary period is not misconduct.

DECISION:

The department decision dated October 26, 2011, reference 03, is affirmed. The claimant was not discharged for misconduct on September 4, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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