

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

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Appeal Number: 04A-UI-01106-DW
OC 08/10/03 R 03
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 are 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:

Teresa D. Hutchinson (claimant) appealed January 21, 2004 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Des Moines Savery Hotel (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on March 2, 2004. Even though the claimant requested the in-person hearing, she did not appear for the hearing. Timothy Eckley, an attorney at law, represented the employer. Tim Sweany, the banquet manager, and Kevin Altes, a human resource representative, testified on the employer's behalf. During the hearing, Employer's Exhibits One through Four were offered. Exhibits One, Two and Four were admitted as evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment without good cause or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 10, 1998. She worked as a part-time bartender. Sweany became her supervisor in March 2003.

In May 2003, the employer gave the claimant three warnings for being late for work. When the employer gave her the first written warning on May 26, the employer warned the claimant her hours would be reduced because of her repeated failure to report to work as scheduled. On May 31, 2003, the employer gave the claimant her second written warning. The claimant received this warning because she had not reported for work or notified the employer she was unable to work as scheduled on May 30, 2003. The employer then took the claimant off the schedule for one week. The employer wanted the claimant to talk to the employer and verify the times she was available to work. The employer understood the claimant was going to school in addition to working. The claimant told the employer in June she had another job and was not available to work.

In August 2003, the claimant asked the employer to put her back on the schedule. The employer agreed to again schedule her to work under the condition that if she were late or had any attendance problems, the employer would immediately discharge her.

The claimant notified the employer she was ill and unable to work as scheduled on September 25. The claimant was next scheduled to work on September 27. The claimant did not call or report to work on this day. The employer discharged the claimant as of September 27 because of continued absenteeism problems.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. There are actually two employment separations in this case. The first occurred in June when the claimant told the employer she had another job and did not ask to be put back on the schedule. After the claimant received her second written warning for attendance problems on May 31, the employer technically suspended her by not scheduling her for about a week. The facts indicate the employer had not, at that time, decided to discharge her. Ultimately, the employer did not put the claimant back on the schedule in June because the claimant indicated she had another job and was not available to work. In June 2003, the claimant voluntarily quit this employment because she had accepted other employment. A claimant is not disqualified from receiving unemployment insurance benefits when she quits because she has accepted other employment, and the employer's account will not be charged for benefits paid to the claimant. Iowa Code §96.5-1-a.

The second separation occurred when the employer discharged her as of September 27, 2003. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the

employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant had a poor attendance history. As a result of her prior attendance problems, the employer informed the claimant when she was again scheduled to work in September that if she again had any attendance problems, the employer would discharge her. As a result of this employment condition, the claimant knew or should have known her job was in jeopardy if she failed to report to work as scheduled without a reasonable excuse. The claimant's failure to report to work or notify the employer she was unable to work as scheduled on September 27 amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for work-connected misconduct. As of September 21, 2003, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 21, 2004 decision (reference 03) is affirmed. The claimant voluntarily quit her employment in June because she had accepted other employment. As of August 10, 2003, when the claimant established her claim for benefits, she was qualified to receive unemployment insurance benefits. After the claimant started working again for the employer in September, the employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 21, 2003. 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.

dlw/b