

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBLY A BAKER
Claimant

APPEAL NO. 07A-UI-07335-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**OC: 06-24-07 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 26, 2007, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on August 15, 2007. The claimant did participate. The employer did participate through Diane Latusick, Environment Supervisor; Dan Donahue, Administrator; and Carmen Wolin, Business Office Manager; and was represented by Beverly Lamb of TALX UC eXpress. Employer's Exhibit One was received.

ISSUE:

Did the claimant voluntarily quit her employment with good cause attributable to the employer or was she discharged for job-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a housekeeper full time beginning in March, 2007 through June 21, 2007, when she was discharged.

On June 9, 2007, the claimant requested the weekend of June 23 and June 24 off. She admits that she knew that merely making a request for time off did not mean that her request would be granted. On the employee schedule, when a request for time off is made, but not yet granted, the schedule indicates "request off." When an employee is allowed to be gone, either for a granted leave request or for a regular day off, the work schedule indicates "off." On June 21, Ms. Latusick told the claimant that because she had been granted time off the previous weekend, and because there were simply no other employees who could work the weekend, she would need to work and her request for time off was denied. The claimant told Ms. Latusick that she wanted the weekend off and that she simply was not going to work. The claimant was told by Ms. Latusick that if she did not work her assigned weekend shift she would be discharged. Ms. Latusick and the claimant had their discussion sometime before 1:00 p.m. on June 21. Ms. Latusick told the claimant that she could speak to the administrator, Dick Ford, about the situation. The claimant went to Mr. Ford's office and told him what had transpired, that her request for leave had been denied and that Ms. Latusick had informed her that if she did not work the assigned weekend shift, she would be discharged.

Mr. Ford left his office to meet with Ms. Latusick. When he returned after meeting with Ms. Latusick, Carmen Wolin informed him that the claimant had turned in her keys, and said she could not wait any longer and left the premises. The claimant was scheduled to work on June 21 until 2:00 p.m. Her time card illustrates that she punched out at 12:59 p.m., one hour before the end of her scheduled shift.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

The claimant knew that a request for time off was not automatically granted. She knew that the employer had to approve the request. The claimant's request for time off was not granted because the employer simply had no other employees to cover the shift and the claimant had taken the previous weekend off. The employer has the right to allocate its personnel in accordance with its needs and available resources. The claimant refused to work the weekend, and refused to continue working after she was told that her time off request was denied. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985). The claimant knew that she could not have time off unless it was

granted. Her refusal to work a scheduled shift and her refusal to complete a shift is insubordination. Her refusal to work a scheduled shift and her refusal to finish working the shift she was in the middle of is sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The July 26, 2007, reference 04 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw