

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DORENE K MILNER
Claimant

APPEAL NO. 08O-UI-09103-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**JAY MADI INC
ECONO LODGE**
Employer

**OC: 07/20/08 R: 02
Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the August 20, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 23, 2008. The claimant participated and presented additional testimony to Scott Buckley. Jay Patel, Owner, represented the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a guest service employee from July 2007 to July 24, 2008. Scott Buckley, the motel manager, was her immediate supervisor. Jay Patel is the owner of the business. The claimant's work hours were 7:00 a.m. to 3:00 p.m. on four weekdays and then one day over the weekend.

Buckley was about to commence an eight-day vacation. Patel approached the claimant on July 24, 2008, and asked her to take the manager's hours, which would have involved working both her full-time hours and at least three of the manager's overnight shifts. The claimant said she could not work both her hours and her manager's hours. The claimant had three minor children at home. The owner then suggested that he would cut her hours if she was not willing to help out while the manager was on vacation. The owner instructed the manager to make out the schedule, and said if the claimant did not like it, "there is the door." The claimant had already completed her shift for the day. The claimant never was informed about her work schedule for July 25 and thereafter. The claimant did not return to work.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for

work-connected misconduct. Iowa Code section 96.5-1 and 96.5-2-a. The preponderance of the evidence establishes the claimant was discharged for refusing to work the manager's hours.

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

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. The owner's request to have the claimant work the manager's hours was clearly unreasonable.

Even if the separation was treated as a voluntarily quit, the claimant would be eligible for benefits because she left work rather than comply with an unreasonable request by the owner.

DECISION:

The unemployment insurance decision dated August 20, 2008, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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