

**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**

**ROBIN E YAMASAKI
657 W PARKER ST
WATERLOO IA 50703**

**GOODWILL INDUSTRIES OF NE IOWA INC
2640 FALLS AVE
WATERLOO IA 50701**

**Appeal Number: 04A-UI-03190-DWT
OC 02/22/04 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:

Robin E. Yamasaki (claimant) appealed a representative's March 18, 2004 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Goodwill Industries of NE Iowa, Inc. (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, a telephone hearing was held on April 12, 2004. The claimant participated in the hearing. Connie Stroh, the human resource director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 15, 2003. She worked as a part-time sales associate.

On January 12, 2004, the claimant did not report to work as scheduled or notify the employer she was unable to work. The claimant had not reported to work on January 12 because she decided to immediately move out of her apartment after she woke up early in the morning and detected a strange "chemical" odor. The employer gave the claimant a written warning for the January 12 no-call/no-show incident.

During the week of February 15, 2004, the claimant called a cab one day to pick her up from work. Before the cab arrived the assistant manager asked her to stay to complete paperwork she had not yet finished. The claimant did not stay because she had already called a cab. The employer gave the claimant a three-day suspension for insubordination or for refusing to stay and complete her work as the employer directed her to do.

On or about February 24, 2004, the claimant contacted the Social Security office and asked about setting up an appointment for herself. The claimant heard she had a Friday appointment at 2:00 p.m. The claimant assumed the appointment was Friday, February 27. The claimant's assumption was not correct. The appointment was Friday, March 6. On February 24, the claimant told Matt, an assistant manager, she had an appointment on Friday, February 27 at 2:00 p.m. The claimant was scheduled to work at 3:30 p.m. on February 27, 2004.

On February 26, the claimant was scheduled to work at 3:30 p.m. She clocked in for work at noon because she needed the hours. The employer sent the claimant home early for clocking in early without authorization. The claimant asserted her immediate supervisor had given her permission to clock in early but there was no discussion as to how early the claimant could clock in. As of February 26, the claimant was still scheduled to work the next day at 3:30 p.m.

The claimant went to the Social Security Office on February 27 for a 2:00 p.m. appointment. She then learned her appointment was not until March 6. The claimant picked up some pamphlets and did not get home until 4:30 p.m. The claimant did not attempt to report to work by 3:30 p.m. because she previously told an assistant manager she had the 2:00 p.m. appointment. The claimant assumed the employer would take her off the schedule on February 27. The claimant did not verify that she had been taken off the February 27, 2004 schedule. The assistant manager told his manager he had talked to the claimant on February 26 and reminded her she was scheduled to work the next day at 3:30 p.m.

On March 4, 2004, the employer discharged the claimant for failing again to report to work as scheduled on February 27 and for insubordination.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 claimant knew or should have known her job was in jeopardy after she received a written warning for failing to report to work or calling the employer on January 12, received a three-day suspension for refusing to stay and complete paperwork as an assistant manager asked her to complete, and a reprimand for clocking in early on February 26. The claimant asserted she assumed the employer understood she would not be at work on February 27 because she had a 2:00 p.m. appointment. The claimant testified about telling the assistant manager about the appointment but she did not testify she asked for the day off on February 27. The fact a person has a 2:00 p.m. appointment does not automatically mean the person is unable to work as scheduled at 3:30 p.m.

The claimant knew or should have known her job was in jeopardy after she received the written warning, a suspension and was reprimanded on February 26 for clocking in early. It was her responsibility to make sure she was not scheduled to work on February 27. The claimant did not do this. The facts indicate that since she did not have a 2:00 p.m. appointment, she could have easily reported to work on February 27 but did not. The claimant's conduct during the last days of her employment constitutes an intentional and substantial disregard of the employer's interests. The claimant committed work-connected misconduct. As of February 22, 2004, the claimant is not qualified to receive unemployment insurance benefits. (Even though the employer did not discharge the claimant until March 1, the claimant could have worked on February 27 but chose not to.)

DECISION:

The representative's March 18, 2004 decision (reference 02) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 22, 2004. 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/kjf