

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KATIE KISTNER  
10 24<sup>th</sup> STREET  
SIOUX CITY IA 51104-1252**

**SCE PARTNERS LLC  
HUMAN RESOURCES  
SIOUX CITY, IA 51101**

**Case No. 21IWDUI0189**

**APPEAL 20A-UI-15183**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, 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:

***Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
or  
Fax (515) 281-7191***

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.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.  
A reference to the decision from which the appeal is taken.  
That an appeal from such decision is being made and such appeal is signed.  
The grounds upon which such appeal is 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.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

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**ONLINE RESOURCES:**

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KATIE KISTNER**  
Claimant

**SCE PARTNERS LLC**  
Employer

**APPEAL 20A-UI-15183**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/5/20**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the November 9, 2020 (reference 04) unemployment insurance decision denying benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 21, 2021. The claimant, Katie Kistner, participated personally. The employer, SCE Partners, LLC. (SCE) did not participate in the hearing. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. Additionally, the claimant submitted the following documents prior to the hearing: 1) a cover letter containing a timeline and statement of the case; 2) recent paystubs; 3) a completed Separation/Departure form; and 4) a copy of the claimant's resignation letter. These documents were admitted into the record and shall be referred to as Exhibits A –D, respectively.

**ISSUES:**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

SCE operates the Hard Rock Hotel and Casino in Sioux City, Iowa. Kistner began working for SCE in July 2016 as a food and beverage supervisor. Kistner was employed on a full-time basis. At the time of hire, she was scheduled to work daytime hours, Mondays through Fridays.

The impact of the pandemic on the hotel and casino caused SCE to lay off many employees—including Kistner—in the spring of 2020. When Kistner was called back to work that summer, her position was moved from Casino Operations to Food and Beverage Operations. She also reported to a new supervisor, Food and Beverage Director Rick Ostrowski.

Ostrowski changed Kistner's schedule to require that she work Tuesdays through Saturdays, rather than Mondays through Fridays. This schedule conflicted with Kistner's family obligations, and she was unable to find child care for her 9 year-old son. Kistner spoke with both Ostrowski and a human resources representative about the issue, but SCE declined to restore her original

schedule. Kistner believed SCE's actions were discriminatory, in that Ostrowski changed the schedules only of his female supervisors, and not those of his male supervisors.

Accordingly, on August 20, 2020, Kistner submitted a letter of resignation on a form provided by SCE. Kistner intended to provide the requisite two-week notice, and indicated on the form that her last day of work would be September 3, 2020. Ostrowski accepted the terms of Kistner's resignation, and signed the form the same day. (Exh. 4).

On Friday, August 21, 2020, Kistner informed Ostrowski she would be unable to work as scheduled the next day due to a lack of child care. Ostrowski did not approve her absence and told her he needed her to come in to train a new employee. Prior to the beginning of her shift on Saturday, August 22, 2020, Kistner called SCE to indicate she would not be coming in because she could not find anyone to care for her son. Ostrowski called Kistner on Sunday, August 24, 2020, and told her he was "accepting her resignation, effective immediately."

Kistner contacted a human resources representative shortly thereafter, who scheduled a separation interview. The departure paperwork lists the reason for separation as "resignation—2 week notice," but indicates a last day worked as August 21, 2020. (Exh. 3).

SCE maintains a points-based system for absences. Each employee is allotted twelve unexcused or excused absences in a rolling, twelve-month period. Kistner had not yet accumulated any points at the time of her August 22, 2020 absence. Kistner seeks unemployment compensation for the time period between August 21, 2020 and September 3, 2020—the date specified in her resignation letter.

#### **REASONING AND CONCLUSIONS OF LAW:**

Here, there is no dispute that Kistner submitted a two-week notice of resignation, with an intended separation date of September 3, 2020. For the reasons that follow, however, the administrative law judge concludes Kistner was discharged from employment prior to the agreed-upon date for no disqualifying reason. A closed period of benefits is allowed.

Iowa Code § 96.5(2)a provides that a person "shall be disqualified" for benefits upon a finding the person was discharged for "misconduct in connection with the individual's employment." Iowa Code § 96.5(2)a. As recently clarified by the Iowa Supreme Court, however: "The standard an employer must meet to sustain disqualification for unemployment benefits is more demanding than the standard ordinarily required to support a termination of employment for just cause." *Irving v. Employment Appeal Bd.*, 883 N.W.2d 179, 195-96 (2016); *see also Gaborit v. Employment Appeal Bd.*, 743 N.W.2d 554, 558 (Iowa Ct. App. 2007) (violation of known work rule does not establish *per se* disqualification from receiving unemployment compensation).

"Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment." *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). The employer has the burden of proof in establishing disqualifying job misconduct. *Id.* at 11.

The applicable regulation defines "misconduct" 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." Iowa Admin. Code r. 871-24.32(1)a. To disqualify a person from benefits, the misconduct must show either "willful or wanton disregard of an employer's interest;" "carelessness or negligence of such degree of recurrence as to manifest equal culpability,

wrongful intent or evil design;" or "intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer." *Id.*

The regulation expressly states that "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." *Id.*; see also *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979) (regulatory definition found to accurately reflect the intent of the legislature.).

With regard to absences, the regulations provide:

(7) *Excessive unexcused absenteeism.* Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Iowa Admin. Code r. 871-24.32(7) (emphasis added).

Absences in good faith, for good cause, with appropriate notice, are not misconduct, however. *Id.* at 10. They may be grounds for discharge but not for disqualification of benefits because substantial disregard for the employer's interest is not shown and this is essential to a finding of misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10-11 (Iowa 1982).

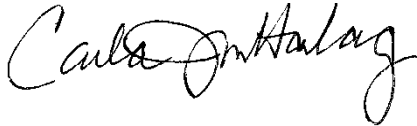
Here, the undisputed record shows Kistner alerted Ostrowski to her lack of child care on Friday, August 21, 2020. She then called in the following morning prior to her shift to confirm she could not come in to work as scheduled. Although this absence may not have been "excused" by SCE, under ordinary circumstances Kistner would simply have been assigned one point under SCE's absence policy. Even with this one point, Kistner had not accumulated sufficient points to justify immediate termination under the point system.

Regardless, SCE has failed to produce any documents or testimony to support that Kistner acted with "willful or wanton disregard" of SCE's interests. See Iowa Admin. Code r. 871-24.32(4) (allegations without additional evidence insufficient to support a finding of misconduct). The fact she told Ostrowski of her lack of child care on Friday, August 21, 2020, and called in prior to her shift on Saturday, August 22, 2020 prevents her conduct from amounting to carelessness or recklessness of the degree necessary to warrant disqualification under the statute

SCE failed to meet its burden to prove Kistner was discharged for misconduct. Benefits are allowed for a closed period of unemployment between August 22, and September 3, 2020.

**DECISION:**

The November 9, 2020 (reference 04) unemployment insurance decision is **REVERSED**. Benefits are allowed between August 22, and September 3, 2020, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Carla J. Hamborg  
Administrative Law Judge

January 22, 2021  
Decision Dated and Mailed

CJH/aa

cc: Katie Kistner (by first class mail)  
SCE Partners, LLC. (by first class mail)  
Nicole Merrill, IWD (by email)  
Joni Benson, IWD (by email)