

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAIME L JACKSON
Claimant

APPEAL NO. 12A-UI-09983-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN BLUE RIBBON HOLDINGS LLC
Employer

**OC: 07/15/12
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, American Blue Ribbon Holdings (Village Inn), filed an appeal from a decision dated August 9, 2012, reference 01. The decision allowed benefits to the claimant, Jaime Jackson. After due notice was issued, a hearing was held by telephone conference call on September 12, 2012. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by General Manager Tim Chapman and was represented by TALX in the person of Tom Kuiper.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jaime Jackson was employed by Village Inn from August 26, 2011 until July 2, 2012 as a part-time cashier/hostess. Ms. Jackson had received written warnings on February 14, April 25 and June 20, 2012, for tardiness. The warnings stated further incidents could lead to disciplinary action up to and including discharge.

On June 28, 2012, Ms. Jackson was scheduled to work 10:00 a.m. to 3:00 p.m. She called shortly before 10:00 a.m. when General Manager Tim Chapman had left to go to the bank. The claimant left a message with another co-worker that she would be absent that day. The co-worker reminded her of the policy that prohibits absence reports being made to anyone other than a member of management. She recommended Ms. Jackson call back a little later and talk with Mr. Chapman. She did not do so and was considered a no-call/no-show to work.

Ms. Jackson was removed from the upcoming schedule and on July 2, 2012, came in to ask Mr. Chapman if she still had a job. He informed her she did not because of the final incident of absence that was not properly reported.

Jaime Jackson filed a claim for unemployment benefits with an effective date of July 15, 2012. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(7) provides:

(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.

The claimant had been advised her job was in jeopardy as a result of her absenteeism. In spite of the warnings, she failed to properly report her final absence on June 28, 2012, by talking with the general manager rather than a co-worker. This means the absence was not excused. This was a final absence of unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of August 9, 2012, reference 01, is reversed. Jaime Jackson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw