

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

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Appeal Number: 05A-UI-06667-SWT
OC: 06/05/05 R: 02
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 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 23, 2005, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 14, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with witnesses, Amy Drake, Eric Pierce, Cheryl Taylor, and Doyle Uitermark. Brenda Weirick participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a manager of the employer's fitness center from April 15, 2005 to June 2, 2005. The claimant had previously performed work getting the center ready to be opened. Brenda Weirick is the owner of the business. The center opened at 5:00 a.m. On June 1, 2005, Weirick instructed the claimant to open the center on June 3.

Weirick warned the claimant that the business had to be open at 5:00 a.m. and that the claimant could not be late. The warning was due to the fact that the claimant had in the past been late when she was scheduled to relieve other employees at the end of their shifts.

On June 3, the claimant overslept and did not open the center at 5:00 a.m. A customer who arrived to exercise called another employee. The employee opened the center and called the claimant but there was no answer. The employee then called Weirick who then went to the center. The claimant did not report to work until after 6:00 a.m. She informed Weirick that she must have set her alarm incorrectly. Weirick left the claimant in charge of the center.

The claimant suffers from emotional problems and had a panic attack because she felt Weirick was angry with her. She called her boyfriend who came to the center. She became overwrought and had difficulty breathing. Her boyfriend told her to go home. The claimant then went home. Her boyfriend called Weirick and said that she had "better come in and run her shop." Her boyfriend stayed long enough to smoke a cigarette and then left the center. He left the portable phone outside on the sidewalk and left a customer in the center unattended.

After leaving work, the claimant never contacted Weirick to explain why she had left the center unattended. Weirick discharged the claimant on June 3, 2005, for arriving late for work and leaving the center without notice or permission.

REASONING AND CONCLUSIONS OF LAW:

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

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof.

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant was an hour late for work on June 3 due to oversleeping, which is not a legitimate reason for being late for work, especially after being warned about the importance of opening the center on time. Even if the claimant was ill, she had an obligation to communicate with her employer, preferably before she left work but definitely after she got home to explain what had happened. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated June 23, 2005, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/sc