

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELANIE D BEAN

Claimant

APPEAL NO. 06A-UI-11775-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIG LOTS STORES INC

Employer

**OC: 10/29/06 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Big Lots Stores, Inc. filed a timely appeal from an unemployment insurance decision dated November 30, 2006, reference 02, that allowed benefits to Melanie D. Bean. Due Notice was issued for a telephone hearing to be held December 22, 2006. Neither party responded to the hearing notice.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Melanie D. Bean's employment ended November 21, 2005. She had been absent without contact on November 2, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.-6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). The evidence establishes that more than two weeks elapsed from the final incident and the discharge. The administrative law judge concludes that the unexcused absence of November 2, 2005 was not a current incident on November 21, 2005. Furthermore, while excessive unexcused absenteeism is misconduct, a single unexcused absence is not excessive. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989). No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated November 30, 2006, reference 02, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs