

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

KARRINE T SECRIST
707 – 2ND AVE
SIBLEY IA 51249

HOPE HAVEN INC
1800 – 19TH ST
ROCK VALLEY IA 51247

Appeal Number: 05A-UI-06921-SWT
OC: 06/05/05 R: 01
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 29, 2005, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 21, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Steve Lavoie 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 vocational instructor from August 3, 2004, to June 8, 2005. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer before the start of their shift if they were not able to work as scheduled. Failing to call in promptly harms the employer's interests because the employer has to provide staff coverage for employees who are late or absent. The

claimant was repeatedly late or absent without notifying the employer before the start of her shift in 2005. She had been warned about this on February 3, February 21, March 17, May 2, and May 19, 2005. On May 19, the claimant was notified that she could be terminated if she was absent without proper notice to the employer.

On June 6, 2005, the claimant was absent from work and did not notify the employer before the start of her shift regarding her absence. The claimant called in four hours after the start of her shift and stated that she had been to the doctor and would not be at work that day. On June 7, the claimant was scheduled to work at 7:45 a.m. She called the employer at 8:05 a.m. stating that she had a migraine headache and was trying to get in to see her doctor again. Her supervisor instructed her that she should come in and meet with him. The claimant had no further contact with the employer that day. When the claimant reported to work on June 8, 2005, she was discharged for repeatedly failing to properly notify the employer regarding her absences and tardiness.

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 the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony that she had called in at the beginning of her shift on June 6 and left a message regarding her absence was not credible and was outweighed by the employer's evidence to the contrary. Even if she had called in that day she did not call in properly on June 7. The claimant's violation of a known work rule after repeated warnings 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated June 29, 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/kjw