

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

TERRY L PIETAN
LOT 129
700 W RIDGEWAY AVE
CEDAR FALLS IA 50613-9501

SOUTHTOWN LOUNGE
C/O DEBRA M YOUNGBLUT
2026 BOPOP ST
WATERLOO IA 50702

Appeal Number: 06A-UI-04293-DWT
OC: 03/26/06 R: 03
Claimant: Respondent (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:

Southtown Lounge (employer) appealed a representative's April 13, 2006 decision (reference 01) that concluded Terry L. Pietan (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 4, 2006. The claimant participated in the hearing. Debra Youngblut, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked just a few months for the employer as a part-time cook. The claimant worked as scheduled on July 15, 2005. The next day he was scheduled to work, the claimant called the employer to report he was ill and unable to work as scheduled. The claimant did not talk to Youngblut because she was not at work when he called. The next day, the claimant again called the employer to report he was ill and unable to work as scheduled. The claimant talked to another cook because Youngblut was not at work when he called. Youngblut was not told the claimant had called the two days he did not report to work. Youngblut assumed the claimant had voluntarily quit his employment when he failed to report to work for two consecutively scheduled days.

The claimant reported to work the third scheduled day and had a doctor's excuse for the two days he missed. The claimant noticed his name was crossed off the schedule. He asked a waitress/ bartender what was going on and she did not know. The claimant was upset that he had been crossed off the schedule. Since the claimant had another job, he did not contact Youngblut. The claimant worked more hours at his other job when his employment with the employer ended.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts do not establish that the claimant voluntarily quit his employment. Instead, when the claimant did not report to work for two days, the employer ended his employment by taking him off the schedule. The employer may not have known the claimant called in sick, but the employer still initiated the employment termination by removing the claimant's name from the schedule.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in

isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the employer's information in mid-July 2005, the employer had legitimate business reasons for removing the claimant from the schedule. The facts indicate the claimant properly notified the employer he was ill and even had a doctor's excuse to verify he had been ill and unable to work. Under these facts, the claimant did not commit work-connected misconduct. Therefore, as of March 26, 2006, the claimant is not disqualified from receiving benefits based on the reasons for this employment separation.

DECISION:

The representative's April 13, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of March 26, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf