

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CECELIA A PORTER**  
Claimant

**APPEAL NO: 13A-UI-03435-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROOKS PARK RESORT LLC**  
Employer

**OC: 02/17/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Brooks Park Resort, L.L.C. (employer) appealed a representative's March 13, 2013 decision (reference 01) that concluded Cecelia A. Porter (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 16, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Heather Ellis appeared on the employer's behalf and presented testimony from one other witness, Cindy Hawn. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on July 31, 2012. She worked part time (about 25 hours per week) as a housekeeper. Her last day of work was January 27, 2013. The employer discharged her on January 29, 2013. The reason asserted for the discharge was a no-call, no-show for work on January 28.

On January 27 the claimant had gone home early sick. Later that day she called and spoke to Hawn, a guest services representative. She asked what other people were saying about her, and asked if people expected her to come in the next morning. She expressed concern that she would not be able to get a doctor's note to cover her January 27 absence until February 1.

Hawn told her that she should go ahead and come into work the next day whether or not she had gotten a note by then, and that otherwise she should call and speak to Ellis, the general manager. The employer's policies require that any absences must be reported directly to the manager, and that messages were not sufficient.

The claimant was a no-call, no-show for work on January 28. At about 8:00 p.m. that evening she called to see when she was next scheduled for work. As Ellis was gone for the day by that point, the claimant left the message for Ellis. On January 29 Ellis returned the call and told the claimant that as she was deemed to have been a no-call, no-show on January 28, she was terminated.

The claimant had prior absences, all of which were for medical reasons; she had not been given any warnings for her attendance. The claimant established a claim for unemployment insurance benefits effective February 17, 2013. The claimant has received no unemployment insurance benefits since the separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her improperly reported absence or no-call, no-show for work on January 28, 2013. While this was technically a violation of the employer's policies, the employer has not established that the single no-call, no-show was substantial misbehavior, as compared to inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or a good faith error in judgment or discretion. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

While the employer may have had a good business reason to discharge the claimant, it has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits as a result of the separation.

**DECISION:**

The representative's March 13, 2013 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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