

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERI SCHRODT
Claimant

BIG LOTS STORES INC
Employer

APPEAL 20A-UI-06381-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: APPELLANT (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On June 15, 2020, the claimant filed an appeal from the June 10, 2020, (reference 01) unemployment insurance decision that denied benefits based on violation of company policy. The parties were properly notified about the hearing. A telephone hearing was held on July 21, 2020. Claimant participated. Employer did not participate. Exhibit A was admitted into the record

ISSUE:

Did claimant quit her employment without good cause?
Did claimant commit job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 28, 2019. Claimant last worked as a part-time laborer. Claimant's primary work was to unload trucks. She also performed other tasks. Claimant was separated from employment on May 2, 2020, when she was discharged for No Call/No Show. Claimant's supervisor, Wendy (no last name provided) sent claimant a text message informing claimant that she was discharged for No Call/No Show for two shifts. The May 7, 2020 message stated, "you no call no showed on 2 shifts last week which is grounds for termination, so unfortunately no [sic] you no longer have a job here" (Ex. A, p. 2)

Claimant credibly testified that she notified her employer when she was absent via text messages. Claimant testified there was no shift that she missed without notifying her employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has

the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

There is no evidence that claimant missed three days a No Call/No/Show. The claimant did not voluntarily quit her employment.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). The employer has the burden of proof to show misconduct. There was no evidence that claimant committed job related misconduct.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The June 10, 2020, (reference 01) unemployment insurance decision is reversed. Benefits are awarded, provided she is otherwise eligible.



James F. Elliott
Administrative Law Judge

July 28, 2020
Decision Dated and Mailed

je/mh