

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEE J HIGHTOWER  
425 KAUFMANN AVE APT B  
DUBUQUE IA 52001-8852**

**APPEAL NO: 09A-UI-18701-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOT ONE LLC  
9495 TURKEY RIDGE  
DUBUQUE IA 52003-8449**

**APPEAL RIGHTS:**

**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:

***Employment Appeal Board  
4<sup>th</sup> 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.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

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.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEE J HIGHTOWER**  
Claimant

**APPEAL NO: 09A-UI-18701-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOT ONE LLC**  
Employer

**OC: 12/21/08**  
**Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's December 4, 2009 decision (reference 05) that concluded he was not qualified to receive benefits, and the employer's account was exempt from charge because he had been discharged for disqualifying reasons. A telephone hearing was held on January 26, 2010. The claimant participated in the hearing. Kurt Guler, the bartender, and Sharon Coleman, the kitchen manager, 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 do not qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in late January 2009 and again in June. The claimant worked about 20 hours a week as a cook.

During the course of his employment, the employer became frustrated with the claimant because he failed to work as scheduled. The claimant reported to work late or called at the last minute to report he was unable to work and had not found a replacement. While the employer may have talked to the claimant about his attendance, the claimant does not remember the employer warning him that his job was in jeopardy for on-going attendance issues.

During the week of September 20, the claimant did not report to work for at least two scheduled shifts. He did not call to let the employer know he was unable to work. Coleman unsuccessfully tried to call the claimant to find out why he was not at work. When the claimant did not call and Coleman could not contact him, the employer assumed the claimant quit and hired a new employee to replace him. On September 26, the claimant told Coleman he had not worked his previous shifts or called because he had problems with his girlfriend and moved to another apartment.

On Saturday, September 26, the claimant reported to work. On this day, he worked 11:00 a.m. to 4:00 p.m. The owner asked the claimant to work until close. When the claimant would not work after 4:00 p.m., the owner had to work. On September 29, Coleman told the claimant he was discharged. The employer ended the claimant's employment because of on-going attendance issues and his failure to call or report to work for at least two scheduled shifts the week of September 20.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, 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 intended to quit his employment. Instead, the employer initiated the employment separation by hiring a new employer to replace the claimant when he did not call or report to work for at least two shifts during the week of September 20.

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).

The claimant's failure to notify the employer he was unable to work at least two shifts the week of September 20 amounts to an intentional and substantial disregard of the employer's interests. The employer discharged him for work-connected misconduct. Therefore, as of September 27, 2009, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's December 4, 2009 decision (reference 05) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 27, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css