

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAMA K DECKER
Claimant

APPEAL NO. 07A-UI-01791-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REGIS CORP
Employer

**OC: 01/14/07 R: 1
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Regis Corporation, filed an appeal from a decision dated February 7, 2007, reference 01. The decision allowed benefits to the claimant, Kama Decker. After due notice was issued, a hearing was held by telephone conference call on March 6, 2007. The claimant participated on her own behalf. The employer participated by Cosmetologist Amy Wingerson, Manager Elizabeth Amendt, Area Supervisor Rhonda Genslar and was represented by Barnett Associates in the person of Ed McNulty .

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Kama Decker was employed by Region Corporation from May 1, 2006 until January 11, 2007, as a full-time stylist. During the course of her employment she did receive more than one verbal warning from Manager Elizabeth Amendt about her attendance. Ms. Decker was in the process of an acrimonious divorce, missed work frequently for court dates, lack of daycare and other personal matters.

On January 7, 2007, another stylist, Amy Wingerson, was in the process of recommending and selling a hair product to a client when the claimant spoke up and said the product made her hair "greasy." Instead of recommending another product, she left and the client did not purchase the item. This is considered interference between stylist and client relations, which is against company policy.

On January 9, 2007, the claimant was scheduled to work at 5:00 p.m. She called Ms. Amendt before that and asked the manager to work her shift for her as she wanted to meet with her husband to work out certain issues regarding the divorce. The claimant was not scheduled to work the next day and could have made arrangements for a meeting then, but was not prepared to wait. This meeting was not mandated by court order. The manager said she would cover the shift only if the claimant called her by 6:00 p.m. to say she would definitely not be able to work.

The salon called the manager after 6:00 p.m. and said the claimant had not reported. Ms. Amendt called Ms. Decker and was told the meeting with her husband was still going on and she would not be able to work. The manager discussed the matter with Regional Supervisor Rhonda Genslar and the decision was made to discharge the claimant for absenteeism and interference with client/stylist relations.

Kama Decker filed a claim for unemployment benefits with an effective date of January 14, 2007, and reopened it effective February 18, 2007. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF 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).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be

considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant was aware her attendance was not to the employer's satisfaction, given the number of verbal warnings she received for absences due to her personal problems. Matters of purely personal consideration, such as oversleeping, lack of childcare and transportation are not considered an excused absence. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Her final absence was due to wanting to meet with her husband to work out matters on the divorce, even though Ms. Decker was not scheduled to work at all the next day and could have met with him at that time without interfering with a scheduled shift. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of February 7, 2007, reference 01, is reversed. Kama Decker is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css