

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEANN R BRISCOE**  
Claimant

**APPEAL NO. 14A-UI-00341-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAVE'S PLACE LLC**  
Employer

**OC: 12/15/13  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Leann Briscoe, filed an appeal from a decision dated January 7, 2014, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 3, 2014. The claimant participated on her own behalf and was represented by Curtis Dial, Attorney at Law.

The employer provided a telephone number to the Appeals Section. That number was dialed at 10:00 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the employer's participation unless the witness contacted the Appeals Section prior to the close of the record. By the time the record was closed at 10:10 a.m. the employer had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**ISSUE:**

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

**FINDINGS OF FACT:**

Leann Briscoe was employed by Dave's Place from July 26, 2011 until December 18, 2014 as a full-time registered nurse. On Monday, December 16, 2013, the claimant received a voice mail message from Administrator Florence Hensely and Director of Nursing (DON) Kayla Hash notifying her she was on suspension until February 2014, and if she had any questions, to call.

Ms. Briscoe did not respond but contacted her attorney with whom she met on Wednesday, December 18, 2013. After the meeting she received another voice mail from the employer stating that since she had not called it was assumed she had quit.

The record was closed at 10:10 a.m. At 10:11 a.m. the employer called and requested to participate.

## 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.

The claimant did not quit but was on suspension "until February." Dave's Place did not provide any information to the claimant about why this had been done. As the employer did not participate in the hearing, no information was provided regarding why Ms. Briscoe was suspended. The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The employer has failed to meet its burden of proof and disqualification may not be imposed.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall

not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The administrative law judge called the number provided by the employer. The employer did not call before the record was closed. The employer did not establish good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

**DECISION:**

The unemployment insurance decision dated January 7, 2014, reference 01, is reversed. Leann Briscoe is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css