

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TIFFARAH A BLACK
2204 S MAGNOLIA ST
SIOUX CITY IA 51104

MEIER TOWING SERVICE INC
416 S PROSPECT ST
SIOUX CITY IA 51107

Appeal Number: 04A-UI-10352-SWT
OC: 08/29/04 R: 01
Claimant: Respondent (1)

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 the **Employment Appeal Board, 4th 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.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 17, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 14, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Charles Day participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a dispatcher from January 12, 2004 to July 13, 2004. In June 2004, the claimant asked the president of the business, Charles Day, if she could take July 14, 2004 off work because she was planning to attend a concert the night of July 13, 2004. Day told the claimant that it would not be a problem.

The claimant purchased the concert tickets and made plans for July 14, 2004. She gave the vice president, Judy Day, a reminder note about her day off, which Judy Day posted in the office. Fifteen minutes before the end of the claimant's work shift on July 13, Judy Day told the claimant that she was not going to be allowed to have the day off and was required to report to work on July 14. The claimant explained that Charles Day had approved the time off and she had made plans based on having the day off. Judy Day told that the claimant that if she did not report to work on July 14, she no longer had a job.

The claimant did not report to work on July 14, 2004, and based on what Judy Day told her, she understood that she had been terminated by the employer. The claimant was discharged for missing work on July 14, 2004, after Judy Day had denied her request for the day off.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for failing to report to work on July 14, 2004. The employer, however, had approved the time off. The employer's denial of the time off 15 minutes before the end of her work shift was unreasonable and, therefore, the claimant's missing work on July 14 was not misconduct. Even if the claimant's failure to report to work could be construed as a voluntarily quit, it would be for good cause because the employer's action in renegeing on the decision to grant the claimant the day off at the last minute was unreasonable.

DECISION:

The unemployment insurance decision dated September 17, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/s