

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

SARA K BOCOX
1536 E PLEASANTVIEW
DES MOINES IA 50320

DRAKE DINER LLC
5700 INGERSOLL AVE
DES MOINES IA 50312

Appeal Number: 04O-UI-05767-CT
OC: 01/18/04 R: 02
Claimant: Respondent (2)

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 for Misconduct

STATEMENT OF THE CASE:

Drake Diner filed an appeal from a representative's decision dated February 11, 2004, reference 01, which held that no disqualification would be imposed regarding Sara Bocox' separation from employment. Pursuant to the appeal, a telephone hearing was held on April 5, 2004. The April 14, 2004 decision of the administrative law judge affirmed the allowance of benefits. The employer appealed to the Employment Appeal Board which, on May 18, 2004, remanded the matter for a new hearing on the basis that the employer had not received notice of the prior hearing.

Pursuant to the remand, due notice was issued scheduling a telephone hearing for June 15, 2004. Ms. Bocox participated personally. The employer participated by Steve Vilmain, Owner.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Bocox was employed by Drake Diner from October 27, 2003 until January 20, 2004 as a part-time server. She worked from 20 to 25 hours each week. She was discharged because of her attendance.

Ms. Bocox was late reporting to work on 13 separate occasions during the course of her employment. She had been verbally warned about her tardiness. The last occasions of tardiness were on January 13 and 15 when Ms. Bocox was 20 and 10 minutes late, respectively. The final incident which triggered the discharge was the failure to give timely notice of the intent to be absent on January 19, 2004. She initially called at 9:45 a.m. to report that she would be absent from her 11:00 a.m. shift due to illness. The employer's policy, which had been provided to Ms. Bocox, requires three hour's notice of intended absences. Ms. Bocox was notified of her discharge on January 20, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Bocox was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Bocox was discharged due to repeated tardiness in reporting for work and the failure to give timely notice of her absences. It is true that she did not give three hour's notice of her January 19 absence. However, she did give over one hour's notice. The administrative law judge appreciates that an individual will not always know three hours in advance that she will be too ill to work. Therefore, it is concluded that the failure to give the required notice on January 19 did not constitute a deliberate disregard of the employer's standards.

Ms. Bocox was late on 13 occasions during a period of employment which lasted approximately three months. The administrative law judge considers this excessive. Ms. Bocox had received verbal warnings about her tardiness and, therefore, knew or should have known that her continued employment was in jeopardy. The evidence does not establish any reasonable cause for the repeated tardiness. The tardiness of January 15 was sufficiently current in relation to the January 20 discharge date and, therefore, there was a current act of unexcused tardiness. Excessive unexcused tardiness constitutes a substantial disregard of the standards an employer has the right to expect. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence and benefits are denied.

No overpayment results from this reversal of the prior allowance as Ms. Bocox has not claimed benefits.

DECISION:

The representative's decision dated February 11, 2004, reference 01, is hereby reversed. Ms. Bocox was discharged for disqualifying misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/kjf