

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

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Appeal Number: 05A-UI-11187-SWT
OC: 10/09/05 R: 02
Claimant: Appellant (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 claimant appealed an unemployment insurance decision dated October 28, 2005, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on November 15, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with a representative, Lauri Soroka. Anna Marie Gonzales participated in the hearing on behalf of the employer with witnesses, Jamie McAllister and Dana Baumhover. Exhibits A and One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time as a telesales representative from November 27, 1999, to October 13, 2005. The claimant had been placed on a written warning for unsatisfactory attendance on January 21, 2005. She was off work due to medical reasons and received

short-term disability insurance benefits from February 25 to September 2, 2005. From September 2 to 11, the claimant was denied short-term disability insurance benefits because she had not initially provided satisfactory medical documentation to show she was unable to work. She did supply satisfactory documentation establishing she was unable to work from September 12 to 22, 2005, and was placed on short-term disability for that period. On September 26, 2005, the claimant received a warning of dismissal for attendance stating that if she had an occurrence of unexcused absenteeism before October 26, 2006, she would be dismissed. On September 28, 2005, the claimant's doctor completed a statement of disability that covered the time period from September 2 to 11.

The employer has a vacation policy that requires employees to submit requests for vacation in advance and conditions approval of the vacation on staffing needs. The claimant was informed and understood that under the employer's work rules, she would receive an occurrence if she was absent on a day she was denied vacation. While the claimant was off work in May 2005, she submitted a request for vacation for the period from October 4 to October 11, 2005, because she was getting married and planned to take a trip afterward to Florida for a honeymoon and to visit a friend who was terminally ill. The claimant was told that under the employer's work rules, she could not request vacation because she was off work on short-term disability.

The claimant worked on September 12 and submitted her vacation request again. She was off work again after September 12 due to illness. On September 16, 2005, the claimant was informed that under the employer's vacation policy, she was granted vacation for October 7 and 11, but she was denied vacation for October 4, 6, 8, and 10. The claimant had already purchased her airline tickets in late August or early September and decided that she was going to take the time off whether the employer granted it or not. Even if the claimant had requested the vacation days in May, she would not have received the entire time off she had requested due to prior requests from other employees.

The claimant worked on September 23 and a half day on September 26. She worked on October 3 and later called in and informed the employer that she was not going to be at work on October 4. She took the day off to prepare for her trip since she was flying to Florida on October 5, 2005. The claimant knew that she was putting her job in jeopardy because of the warning she had received. The claimant was in Florida from October 5 to 10. She returned to work on October 13, 2005, and was discharged for excessive unexcused absenteeism.

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 claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant had been repeatedly warned about her attendance but chose to disregard the warnings by taking time off that was not approved. Her attitude about her job was demonstrated when she took October 4 off without approval to get ready for her trip, despite the fact that she only worked a few days in September and October. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated October 28, 2005, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/tjc