

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

MICHELE M PETERSON  
137 – 22<sup>ND</sup> SE  
MASON CITY IA 50401

NORTH IOWA FAIR ASSN  
3700 – 4<sup>TH</sup> ST SW  
MASON CITY IA 50401

Appeal Number: 05A-UI-12211-DWT  
OC: 11/06/05 R: 02  
Claimant: Appellant (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, 4<sup>th</sup> 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:

Michele M. Peterson (claimant) appealed a representative's December 1, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of North Iowa Fair Association (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 19, 2005. The claimant participated in the hearing. Katie Elson, the general manager, and Jim Kofoot, the bingo supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant most recently started working for the employer again on March 9, 2005. The employer hired the claimant to work as a part time bingo worker on the weekends. The employer experienced problems with the claimant when she had worked before and told her that if she received one warning, she would be discharged.

On May 14, July 9 and September 4, Kofoot talked to the claimant because he concluded she was either intoxicated or high when she was working. The employer did not discharge the claimant for these incidents.

The claimant did not work as scheduled on June 12, 18, July 3, August 19, and September 9. The employer talked to the claimant about her attendance and reminded her that she needed to work as scheduled. On September 16, 2005, the claimant talked to Connie, a supervisor, and asked if the employer could find someone to cover her shift that weekend. The claimant had recently sold her car and she wanted to go out of town. After the claimant understood the employer covered her scheduled shifts, she went out of town.

The employer discharged the claimant on September 19, 2005. The employer discharged the claimant because there were problems after the employer rehired her in May and because Kofoot believed the claimant had not contacted the employer or reported to work on September 16, 17, and 18, days she was scheduled to work.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established compelling business reasons for discharging the claimant. The claimant had an attendance problem prior to September 16, 2005. On September 16, the facts indicate the claimant contacted a supervisor to find out if the employer could cover her shift so the claimant could go out of town. The claimant reasonably believed the employer covered her shifts so she was not needed at work on September 16, 17 and 18. Under the facts of this case, the current act – missing work on September 16, 17 and 18 does not rise to the level of work-connected misconduct. The employer did not establish the claimant reported to work intoxicated or high. Even if the claimant had reported to work “high,” the employer did not discharge her these days and there is no current act regarding this problem. A preponderance of the evidence does not establish that the claimant committed a current act of work-connected misconduct. Therefore, as of November 6, 2005, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative’s December 1, 2005 decision (reference 01) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute a current act of work-connected misconduct. As of November 6, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer’s account may be charged for benefits paid to the claimant.

dlw/kjf