

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLA D KENT
Claimant

APPEAL NO: 07A-UI-05516-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REGIS CORP
Employer

OC: 05/06/07 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Regis Corporation (claimant) appealed a representative's May 21, 2007 decision (reference 01) that concluded Marla D. Kent (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2007. The claimant participated in the hearing. Marlene Sartin of Barnet Associates appeared on the employer's behalf and presented testimony from two witnesses, Laura Gould and Stephanie Kirkland. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 3, 2003. She worked full time as a stylist in the employer's Ottumwa, Iowa salon. Her last day of work was May 2, 2007. The employer discharged her on May 4; the reason for discharge was being absent from work on May 3.

The claimant had originally been scheduled for work on May 3 from 9:00 a.m. to 5:00 p.m. On April 30 she had requested and been granted permission to switch shifts to the 10:00 a.m. to 6:00 p.m. shift and then to come in late for the 10:00 a.m. start of the shift; the reason for her request was an uncle's funeral preparations beginning at 10:30 a.m. to which the claimant was accompanying her mother. The claimant's mother collapsed shortly before noon, prior to all of the funeral events ending, and the claimant contacted and informed the employer; the employer understood that at the least the claimant would not be in until after getting her mother returned home and settled, which would have been at least near 1:00 p.m. The employer had responded to the claimant that she should take care of her mother.

The claimant did not get her mother home and settled until nearly mid-afternoon, by which time she had a headache herself. Given the employer's responses during the day, the claimant

believed that the employer was understanding and would not mind if she did not come in for the remaining couple hours of the shift; however at approximately 4:30 p.m. she spoke to one of the other stylists who was in the shop, who indicated that there were still herself and another stylist there, and that there were no customers, and that the claimant would not have anything to do if she came in; the other stylist urged the claimant to go home herself and take care of her headache, which the claimant then did.

However, Ms. Gould, the salon manager, who had previously granted the claimant permission to switch her schedule and to come in late on May 3, became disturbed when she learned that the claimant had not come in at all; she had not known that the claimant had called the shop and been told that business was slow. The claimant had recently been given several warnings regarding comments she had made that she did not care about how things were going in the salon and threatening to quit. Ms. Gould then concluded that the claimant had intentionally breached an agreement to come in for at least part of the day on May 3 and had taken undue advantage of the employer's willingness to accommodate her situation; as a result, the claimant was discharged on May 4.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

Iowa Code § 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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is her not coming in for any of her shift on May 3 as previously been contemplated. Under the circumstances of this case, the claimant's failure to come in for any of her shift on May 3 was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence or was a good faith error in judgment or discretion, as compared to intentional, substantial, or repeated misbehavior. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's May 21, 2007 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs