

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY E AXIOTIS
Claimant

APPEAL NO. 11A-UI-13938-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEAVER ENTERPRISES LTD
Employer

OC: 09/18/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 12, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on November 18, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Cody Van Voorhis participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time for the employer as a team member in the employer's KFC restaurant in Mason City from November 3, 2006, to around September 6, 2011. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to personally notify the employer and find their own replacements if they were not able to work as scheduled.

The claimant had been warned in April 2010 about repeated tardiness and suspended in November 2010 for excessive absenteeism. She had also been verbally warned regarding absenteeism in 2011.

On September 4 and 5, the claimant was absent from work without notifying the employer and without finding a replacement. She was lodged in jail in Minnesota after she and her boyfriend were stopped by the police. Her boyfriend was driving without a valid driver's license and she was carrying prescription drugs belonging to her boyfriend in her purse. The jailer was a friend of one of the managers and she let the manager know the claimant was in jail.

The district manager had given instructions to terminate the claimant after these absences, but she was allowed to continue working because a manager had allowed the claimant to work on approximately September 6. She was placed on probation due to her excessive unexcused absenteeism.

The claimant was scheduled to work September 11. She did not report to work or call in. She came into the restaurant on September 12 and asserted that she did not know she was on the schedule to work the day before. She was in fact on the schedule to work.

The employer discharged the claimant on September 12 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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides that: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer."

The claimant had been warned about excessive unexcused absenteeism. Being in jail is not an excused reason for missing work and she did not properly notify the employer about the absences. Her final absence was likewise unexcused and without proper notice, because she did not check her schedule carefully.

DECISION:

The unemployment insurance decision dated October 12, 2011, 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw