

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LA DONNA J HINDERS
Claimant

APPEAL NO. 10A-EUCU-00885-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOLIDAY INN
Employer

OC: 11/15/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated September 15, 2010, reference 03, that denied benefits based upon her separation from Holiday Inn. After due notice, a telephone conference hearing was held on November 4, 2010. The claimant participated personally. The employer participated by Brandy Smith, General Manager and Linda Sexton, Housekeeping Supervisor.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: LaDonna Hinders was employed by Holiday Inn from September 24, 2009 until July 30, 2010 when she was discharged for failing to report or provide notification for three consecutive workdays. Ms. Hinders held the position of housekeeper working 40 or more hours per week. Her immediate supervisor was Linda Sexton.

Ms. Hinders was discharged after she failed to report or to provide advanced notification as required for scheduled working days July 27, 28 and 30, 2010. Although the claimant was aware that she was to call in three hours before the work shift each day to report any impending absences, and had done so in the past, the employer received no advance notification from Ms. Hinders for those three working days. After the claimant had not reported for work and provided no notification and had no additional contact with the employment thereafter, Ms. Hinders was discharged from employment and removed from the company employment rolls.

Prior to her discharge the claimant had received warnings for unsatisfactory attendance. Ms. Hinders had been warned on May 17, 2010 that any further failures to report for work without providing notification to the employer would result in additional disciplinary action. The

claimant was discharged following the final attendance infractions because the no-call/no-show incidents had exceeded one day without calling in or reporting.

It is the claimant's position that she called in and left a voice message on the night of July 26, 2010, stating that she would not be reporting to work on July 27 and 28, due to dental issues and a dental appointment. It is the claimant's further position that she left a doctor's excuse "taped" to the housekeeping office doors. The claimant did not dispute her discharge from employment by going up the company's chain of command or going to the company's human resource department.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It is.

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.

In this matter the claimant was discharged from employment after she failed to report for scheduled work on July 27, 28 and 30, 2010 without providing advanced notice to the employer as required by established company policy. The claimant was aware of the policy and had previously been warned on May 17, 2010 that further incidences of failure to report without providing notification would result in increasing disciplinary action. The claimant's immediate

supervisor, Ms. Sexton, testified under oath that she personally checked the company's voice messaging system and did not receive any notification whatsoever from Ms. Hinders that she was going to be absent from work on July 27 or 28, 2010. The administrative law judge finds Ms. Sexton to be a credible witness and finds that her testimony is not inherently improbable. The administrative law judge also notes that although Ms. Hinders believed that she had been discharged on July 29, 2010, she did not dispute her discharge either with her immediate supervisor or by going up the chain of command or to the company's human resource department.

Based upon the totality of the evidence in the record the administrative law judge concludes that the claimant was discharged when she failed to provide proper notification of her impending absence for three consecutive workdays in violation of company policy and a previous warning that had been served upon her. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated September 15, 2010, reference 03, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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