

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ASHLEY E PERKINS**  
Claimant

**APPEAL NO. 07A-UI-04339-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNCLE NANCY'S COFFEEHOUSE**  
Employer

**OC: 03/25/07 R: 02  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Ashley E. Perkins (claimant) appealed a representative's April 18, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Uncle Nancy's Coffeehouse (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 15, 2007. The claimant participated in the hearing. Nancy Watt 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:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on September 8, 2003. She worked part time (approximately 35 hours per week) as a barista/server/preparer in the employer's coffeehouse and café. She normally worked 9:00 a.m. to 4:00 p.m., Monday through Friday. Her last day of work was March 26, 2007. The employer discharged her on March 28, 2007. The reason asserted for the discharge was excessive absenteeism.

In the last six months of the claimant's employment she had multiple absences, primarily due to personal issues or a child's illness, including eight since January 1, 2007. After an absence in mid-March, on or about March 14, Ms. Watt, a co-owner of the business, advised the claimant that she could not afford to have employees whose attendance was so unreliable. On March 22, the claimant left work early with the statement she was leaving to seek a restraining order against the father of one of her children, although she ended up not going that day to seek the restraining order. On March 23, the claimant was absent all day because she had received a call from the father of another child who was in Missouri indicating the child was injured; by the time the claimant reached the town in Missouri, she learned that it was not a serious injury, but she determined it was too late to return to Iowa and report for work.

She returned to work the next Monday, March 26, but on March 27 she called in and said she would be absent because she “need to get myself together.” The employer then determined to discharge the claimant.

**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); Iowa Code § 96.5-2-a.

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.

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).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. 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's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's April 18, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 27, 2007. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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