

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TINA M SLATE**  
Claimant

**APPEAL NO. 11A-UI-14196-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GMRI INC**  
Employer

**OC: 12/05/10**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, GMRI, filed an appeal from a decision dated October 18, 2011, reference 01. The decision allowed benefits to the claimant, Tina Slate. After due notice was issued, a hearing was held by telephone conference call on November 28, 2011. The claimant participated on her own behalf. The employer participated by General Manager Dan Klien.

**ISSUE:**

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

**FINDINGS OF FACT:**

Tina Slate was employed by GMRI from December 27, 2010 until September 30, 2011 as a part-time prep cook. She had received a written warning for being no-call/no-show to work in August 24, 2011. Ms. Slate was involved an auto accident, for which she was ticketed, on her way to work. The warning stated further disciplinary action could result, up to and including discharge, for any further rule violations.

On Saturday, September 24, 2011, Ms. Slate was scheduled for a split shift. She finished the first part of her shift and left. Sometime after that she was in another auto accident where she ran off the road. Another driver had reported her to the Huxley police department and officers came out to investigate. She was held on possible OWI charges and put in a holding cell pending the results of the tests. Ms. Slate was able to contact General Manager Dan Klien on September 24, 2011, to notify him she would not be in for the second part of her shift. He said to contact him on September 26, 2011, to let him know if she would be in for her shifts on that day. Mr. Klein said he was the opening manager and would be available after 7:00 a.m. Ms. Slate was no-call/no-show for the shift on September 26, 2011,

## REASONING AND CONCLUSIONS OF LAW:

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.

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 had been advised her job was in jeopardy as a result of her failure to properly notify the employer when she was going to be absent for a shift. Her absence for the second part of her shift on September 24, 2011, was properly reported but not the absence on September 25, 2011. The general manager has specifically told her to contact him after 7:00 a.m. the next day to update him. Her incarceration prevented her from calling. Matters of purely personal consideration, such as being in jail, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for conduct not in the best interests of the employer and she is disqualified.

**DECISION:**

The representative's decision of October 18, 2011, reference 01, is reversed. Tina Slate is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css