

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON M BIDDICK
Claimant

APPEAL NO. 09A-UI-07160-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARBIES
Employer

OC: 04/12/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Arbies filed an appeal from a representative's decision dated May 1, 2009, reference 01, which held that no disqualification would be imposed regarding Aaron Biddick's separation from employment. After due notice was issued, a hearing was held by telephone on June 19, 2009. Mr. Biddick participated personally. The employer participated by Dan Kenne, District Manager, and Michael Rettig, Unit Director. The employer was represented by Susa Chmelovsky of TALX Corporation.

ISSUE:

At issue in this matter is whether Mr. Biddick was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Biddick was employed by Arbies for approximately three years ending February 14, 2009. He worked approximately 20 hours each week as a crew member. One week prior to February 9, 2009, Mr. Biddick told the employer he would be in jail for one week and not able to work during that time. Therefore, he was removed from the schedule. He then notified the employer that he was not going to jail. He was put back on the schedule but, because some of his hours had been given away, he was scheduled for short shifts on February 9, 10, and 13.

Mr. Biddick was scheduled to work from 11:30 a.m. until 1:00 p.m. on February 9, 10, and 13. On Monday, February 9, he called Carrie and asked if it made any sense for him to come in for only 1.5 hours of work and she told him it was not necessary to come in. He had a similar conversation with Chris on Tuesday, February 10. Chris told him he did not need to be there. Neither Carrie nor Chris told him he might be fired if he did not work the short shifts on February 9 and 10. On February 12, Mr. Biddick was discharged for not working on February 9 and 10. He had not previously been disciplined regarding attendance. He had worked short shifts in the past.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Biddick was discharged because he did not work February 9 and 10. He questioned a member of management on both dates as to whether it was necessary for him to come in due to the fact that each shift was only 1.5 hours. The administrative law judge believes Mr. Biddick had a good-faith belief that his absence was authorized on both occasions when the managers told him it was not necessary to come in.

Mr. Biddick had worked short shifts in the past. Given this factor, the administrative law judge is not inclined to believe that he refused to work short shifts on February 9 and 10. Moreover, he was not told on either date that he was putting his job in jeopardy by not working the short shifts. Therefore, he was not given a fair opportunity to come in on February 9 and 10 and salvage the employment. For the reasons cited herein, it is concluded that the employer has failed to establish that Mr. Biddick deliberately and intentionally acted in a manner he knew to be contrary to the employer's standards or interests. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated May 1, 2009, reference 01, is hereby affirmed. Mr. Biddick was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css