

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ELLEN C REYNOLDS
470 OXFORD
EAST DUBUQUE IL 61025

A IH BODY SHOP SUPPLY
2400 KERPER BLVD
DUBUQUE IA 52001

Appeal Number: 05A-UI-02394-CT
OC: 01/23/05 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ellen Reynolds filed an appeal from a representative's decision dated February 25, 2005, reference 03, which denied benefits based on her separation from A IH Auto Body Supply (IH). After due notice was issued, a hearing was held by telephone on March 24, 2005. Ms. Reynolds participated personally. The employer participated by Russ Whalen, Production Supervisor.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Reynolds was employed by IH from November 15, 2004 until January 24, 2005 as a full-time office assistant. On January 7, 2005, she left for lunch and did not return. After she left, she called to report that she would not be returning because of a family emergency. The emergency was that she could not locate her 17-year old daughter. Other employees reported seeing Ms. Reynolds at the local casino later in the day, between 4:00 and 4:30 p.m. On the following Friday, January 14, Ms. Reynolds again left for lunch but did not return. She did not advise anyone before she left that she would not be back and did not call the employer after she left. Later that day, she went to the local casino.

On the following Friday, January 21, the employer spoke to Ms. Reynolds in the morning and told her she had to come back to work after lunch. She clocked out at 12:17 p.m. and was allowed to take one hour for lunch. She did not return to work by the appointed time and did not contact the employer regarding her intentions. The employer suspected that she was at the casino. The employer waited approximately 45 minutes after Ms. Reynolds was due back and then drove to the casino. She was observed in the parking lot and directed back to work. Once back at the office, she explained to the employer that she had been at the casino and adjacent hotel making application for part-time work. She was sent home for the day and fired on January 24, 2005. Her failure to return to work after lunch on three consecutive Fridays was the sole reason for the discharge. Ms. Reynolds was paid every Friday.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Reynolds was separated from employment for any disqualifying reason. 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). Ms. Reynolds was discharged because she failed to return to work after lunch. Her reasons for not returning were not credible. Her explanation that there was a family problem on January 7 loses credibility in light of her subsequent absences on January 14 and January 21. Moreover, she was seen at the casino late in the afternoon of January 7. Her explanation that she was locked out of her home after she went home for lunch on January 14 did not ring true. Ms. Reynolds was able to go to the casino the afternoon of January 14. In spite of being told the morning of January 21 that she had to return from lunch, Ms. Reynolds again failed to return. She was at least 45 minutes late from lunch when the employer observed her in the parking lot at the casino. Whether she would have returned on her own is unknown. Her explanation that she was at the casino making application for work was not found credible. She was in the casino the two prior Fridays and could have applied for work then. Furthermore, completing work applications for other employers is not good cause for missing time from the current employer.

It is true that Ms. Reynolds had not been told that she would be fired because of her conduct. However, she was told on the morning of January 21 that she had to come back to work after lunch. This should have been sufficient to alert her to the fact that her failure to return on the prior two Fridays was unacceptable. The administrative law judge concludes that Ms. Reynolds' conduct constituted a substantial disregard of the standards the employer had the right to expect. Accordingly, benefits are denied.

DECISION:

The representative's decision dated February 25, 2005, reference 03, is hereby affirmed. Ms. Reynolds was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/kjf