

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MIMI BOOTS**

Claimant

**APPEAL NO. 08A-UI-05022-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LONGBRANCH INC  
BEST WESTERN LONGBRANCH  
MOTOR INN**

Employer

**OC: 04/27/08 R: 03  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 23, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on June 9, 2008. Claimant participated. Employer participated through Doug Delong, Dan Ecklor, and Connie Morand. Employer's Exhibits 1 through 3 were received.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time server from January 5, 2005 until May 2, 2008 when she was discharged. She was scheduled to work the shift beginning at 5:30 a.m. on April 26 and called either front desk clerk Diane or Gloria to tell them she would be unable to work the next morning because her son was ill. It was the historical practice for the front desk clerk to notify the manager rather than to call the manager directly. When the schedule was initially posted, claimant told her manager Ecklor that there were three people on the schedule to open on April 26 when there were normally only two. Ecklor told her it was mistake but it would be up to Chantal to decide if she wanted to work that shift. Before calling in her absence on April 25 claimant verified that Chantal would work the shift and there would be two people to open. When Ecklor called claimant into his office on April 27 he did not give her anything to sign but just told her she needed to take a week off and he would put her on the following week's schedule. She did not walk out of the office during the meeting or refuse to sign any documents. She filed for unemployment benefits later that day due to being taken off the schedule for the week. When she reported on Friday, May 2 to pick up her paycheck and was told she was fired because she "pissed off the big guys" Delong and Vince by filing for unemployment benefits.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy (retaliation for filing a claim for unemployment benefits is against public policy), but if it fails to meet its burden of proof to establish job-related misconduct as the

reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Since employer fired claimant in retaliation for filing a claim for benefits during the week she was taken off the schedule, and any other purported reasons are considered pretextual, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

**DECISION:**

The May 23, 2008, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/css