

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTI A TAKES
Claimant

APPEAL NO. 08A-UI-10161-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLAZIN WINGS INC
Employer

**OC: 09/07/08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 24, 2008, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on December 9, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Tracy Hare. Barry McQuiston participated in the hearing on behalf of the employer with a witness, Roxanne Rose.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a server from October 20, 2007, to August 27, 2008. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after two days of unreported absence.

After August 27, 2008, the claimant was next scheduled to work on September 3, 2008, she was picked up on a warrant because she had not served a sentence on a criminal charge that required her to be in jail for two days. She knew that she had the warrant and knew that if she was stopped by the police, she would have to serve her time in jail. She called the employer to notify the employer that she was going to miss work. The employee who was in the car with the claimant also notified the employer about the fact that the claimant was in jail.

After the claimant was released from jail, she contact the employer to see if she still had a job, but was informed that her employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected

misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The Agency decided the claimant voluntarily quit employment based on a rule that states a claimant is deemed to have voluntarily quit employment if the claimant becomes incarcerated. 871 IAC 24.25(16). This is a presumption that can be rebutted by evidence to the contrary. The evidence establishes the claimant did voluntarily quit employment. Instead, she was discharged for unexcused absences. The question is whether she was discharged for misconduct.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant knew that she would have to serve time in jail. Instead of taking care of her incarceration so she could serve her time on days when she was not scheduled to work, she neglected this obligation, which caused her to miss work on scheduled days. Her absences were unexcused. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated October 24, 2008, reference 01, is modified with no change in the outcome. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css