

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARCY SPAIN**  
Claimant

**APPEAL NO. 06A-UI-11054-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THARALDSON LODGING I-A INC**  
Employer

**OC: 10-08-06 R: 03  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 31, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 4, 2006. The claimant participated in the hearing. Jesse Kremer, Area Director, and Karen Brewin, Employer Representative, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time night auditor for Tharaldson Lodging from March 13, 2006 to August 22, 2006. On July 24 and July 29, 2006, the claimant left early. She was training a new co-worker and the employer told her she did not have to stay for the entire shift. On July 29, 2006, the claimant was removed from the schedule because the employer did not believe she was reliable. The claimant was on vacation August 3 to August 17, 2006. The claimant talked to the employer about being returned to the schedule; and after she “begged for her job,” the employer scheduled her August 18, 2006. On August 18, 2006, she called the employer five minutes before the start of her shift and said she was ill and would not be in that night. On August 22, 2006, the employer asked the claimant about her absence August 18, 2006, and the claimant said she was working at her other job. The claimant denies having another job. The employer decided to terminate the claimant’s employment because the third shift was difficult to cover and the night auditor is the only person on duty during that time period. The employer’s policy states that the first unexcused absence would result in a verbal warning and the second unexcused absence within the next 90 days would result in termination unless it was called in within the six hours prior to the start of her shift. The claimant did not receive any warnings about her attendance and believed she was only required to call in two hours before her shift. She did not know her job was in jeopardy.

## REASONING AND CONCLUSIONS OF LAW:

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

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the employer was dissatisfied with the claimant's attendance, the claimant offered credible explanations for leaving early July 24 and July 29, 2006. She did report her absence August 18, 2006, after the proper reporting time had expired, but the employer has not offered any evidence of other unexcused absences. Additionally, the employer did not issue any warnings to the claimant and therefore she was not aware her job was in jeopardy. Consequently, for the reasons stated above, the administrative law judge must conclude that the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

**DECISION:**

The October 31, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw