

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

D'ANGELO HARDEN
Claimant

APPEAL NO: 19A-UI-04461-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHIPOTLE SERVICES LLC
Employer

OC: 04/28/19
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 22, 2019, reference 02, 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 July 23, 2019. The claimant did not participate in the hearing. Nicole Shields, General Manager; Tom Zuffa, Field Leader; and Melissa Hill, 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 full-time certified trainer for Chipotle Services from May 17, 2018 to May 2, 2019. He was discharged for a no-call/no-show May 2, 2019.

The claimant had difficulty passing the exam to be a kitchen manager and the employer met with him May 1, 2019, to explain he could not work as a kitchen manager without passing the test but stated it had plenty of hours for him on the morning or evening prep staff. Field Leader Tom Zuffa talked to the claimant about how he could help him with the test and offered to pay for an 8 hour class so the claimant could prepare for and take the exam again. The claimant was very interested in taking the class and said he would be back the next day before leaving early May 1, 2019.

The claimant was scheduled to work at 7:00 a.m. May 2, 2019, but did not call or show up for work. General Manager Nicole Shields tried to call him and text him but did not receive a response and consequently she secured permission from Mr. Zuffa to terminate the claimant's employment. Following that the employer's system sent the claimant an email stating his employment was terminated.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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).

The claimant is not considered to have voluntarily quit his job under Iowa law until he accumulates three consecutive no-call/no-show absences. Rather than wait to see if the claimant returned to work, the employer terminated his employment after one no-call/no-show absence. One no-call/no-show absence is an isolated incident of misconduct and as such does

not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The May 22, 2019, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn