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

JANNETTA Y WASHINGTON
Claimant

DILLARD'S INC
Employer

APPEAL NO. 07A-UI-02218-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02-04-07   R: 02
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 1, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 20, 2007. The claimant did participate. The employer did participate through Doree Henderson, Assistant Store Manager. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a sales associate full-time beginning November 28, 2006 through January 6, 2007, when she was discharged.

The claimant was participating in a counseling meeting with her supervisor Carrie and Ms. Henderson being counseled on her attendance. The claimant indicated when she put in her job application that she was available to work any hours. As a full-time regular employee the claimant was required to work two nights per week and one Sunday per month. All regular employees are required to work such a schedule. The claimant was given a copy of the attendance policy and the work rules were read aloud to her and all other employees during her orientation session.

The claimant was absent from work on Dec 23, 2006; on December 27 she worked one-half day and went home sick; on January 1 she was absent; on December 22 she was tardy; on December 26 she was tardy; on December 28 she left early; on December 29, 2006 she left early; on January 2, 2007 she left early; and on January 3 she left early.

During the January 6 meeting, the claimant would not agree to work the schedule that included two week nights and one Sunday per month. Because the claimant refused to agree to work the assigned schedule, she was discharged. The claimant refused to work because the bus schedule did not allow her to work on nights and on Sundays. When the claimant was hired she

was told what the work expectations were as far as the schedule was concerned and she agreed to work and did work the assigned nights and Sundays during her first month of employment. During the January 6 meeting when her supervisor Carrie was present, the claimant never alleged that she had been given permission to change her schedule by Carrie as she alleged at hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant indicated when she put in her application for employment that she was available to work all hours. When she was hired as a full-time regular employee she was told that she would be required to work two nights a week and one Sunday per month. The claimant agreed and did work the required schedule for the first month of her employment. The claimant was being counseled on her attendance issues and refused to agree to work the assigned schedule.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985). The claimant knew the required schedule and had worked it previously. Her refusal to agree to work the required nights and Sunday in the future is sufficient misconduct to disqualify her from receiving unemployment insurance benefits. The employer was not obligated to accommodate the claimant's transportation issues or problems as she was clearly told the required schedule when she was hired. Benefits are denied.

DECISION:

The March 1, 2007, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

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