

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ROBIN M MCCARTY**  
Claimant

**APPEAL NO. 19A-UI-02917-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARROLL SUBWAY INC**  
Employer

**OC: 10/21/18**  
**Claimant: Appellant (3)**

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

**STATEMENT OF THE CASE:**

Robin M. McCarty, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated April 1, 2019, reference 05, which denied unemployment insurance benefits, finding that the claimant voluntarily quit work on December 3, 2018 by failing to report for work for three days and not notifying the employer of the reason. After due notice was given, a telephone hearing was held on April 26, 2019. Claimant participated. The employer participated by Mr. Steven Gute, company owner.

**ISSUE:**

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having heard the testimony and considered all of the evidence in the record, the administrative law judge finds: Robin McCarty was employed by Carroll Subway, Inc. Ms. McCarty worked as a part-time sandwich preparation worker and was paid by the hour. Claimant's immediate supervisor was Ms. Beth Belt. Ms. McCarty was discharged from her employment with Carroll Subway, Inc. after she failed to report for scheduled work notify her employer of the reason for three consecutive work shifts following December 3, 2018. After Ms. McCarty had had not reported to work for three days and had not notified the employer, the company manager sent her a text message telling her not to report back to work. Later, when Ms. McCarty was questioned by the employer as to why she had not reported nor called in for three days, Ms. McCarty responded only that she was sick.

Ms. McCarty had been employed by Carroll Subway, Inc. previously and had been discharged from her employment because she had been undependable and because of her failure to provide the employer required notification if she was going to be absent. The company policy requires employees to call in each day to inform the employer if they are unable to report for scheduled work.

When Ms. McCarty was rehired, the employer emphasized to the claimant that she must call in each time she was absent and emphasized the need for Ms. McCarty to be dependable.

After resuming her employment, Ms. McCarty was again often absent from work and did not provide notification to the employer. When she failed to report for three consecutive work days without notification, a decision was made to discharge her and she was not allowed to come back to work by the company.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the claimant was separated from her employment with Carroll Subway, Inc. work work-connected misconduct sufficient to warrant the denial of job insurance benefits. She was.

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).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

In this case, the employer made a decision to terminate Ms. McCarty from her employment with Carroll Subway, Inc. because the claimant had failed to report for work without providing the

required notification for three consecutive work days. The claimant had been warned in the past and had been separated from employment for the same reason. After being rehired, Ms. McCarty was specifically warned that her attendance must improve and that she must provide daily notification to the employer if she was unable to report for scheduled work. Although the claimant agreed to do so, she continued to be absent without notifying the employer.

When Ms. McCarty was absent from work for three consecutive work shifts without providing any notice or reason to the employer that she would be absent, the employer made a decision not to allow Ms. McCarty to return to employment based upon her failure to report or provide the required notification after being warned.

Ms. McCarty asserts that she did not quit her job, but was discharged by the employer. If an employer has a rule prohibiting an employee from being absent for three or more consecutive work days without providing notification and the employee violates the rule, there is a presumption that the worker has quit employment. In this case, the employer did not have a specific rule regarding failure to notify for three consecutive work days, but made a decision to discharge Ms. McCarty based upon her repetitive failure to report for work or notify the company.

No aspect of the contract of employment is basic than the right of the employer to expect that employees will appear for work on the day and hour agreed upon and .... Failure to honor that obligation, and provide notification in conjunction with the expectation shows a willful disregard of the employer's interests and standards of behavior that the employer has a right to expect of employees under the provisions of the Iowa Employment Security Law. For these reasons, the administrative law judge concludes that the employer has sustained its burden of proof to show that the claimant's discharge from employment was for work-connected misconduct. Accordingly, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's unemployment insurance decision dated April 1, 2019, reference 05, is affirmed as modified. The portion of the termination disqualifying the claimant for benefits is affirmed. The portion of the termination finding the claimant voluntarily quit work on December 3, 2018 is modified to find the claimant was discharged for work-connected misconduct.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

rvs/rvs