

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH HAZLIP
Claimant

APPEAL NO: 09A-UI-10073-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FRITSCH FAMILY PARTNERS LLC
CLARION HOTEL & CONVENTION CENTER**
Employer

**OC: 05/31/09
Claimant: Appellant (5)**

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

STATEMENT OF THE CASE:

Deborah Haizlip (claimant) appealed an unemployment insurance decision dated July 2, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Fritsch Family Partners, LLC (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 29, 2009. The claimant participated in the hearing. The employer participated through Dee Kerr, Controller and Jeri Smith, Head Housekeeper. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time housekeeper from December 2, 2008 through May 6, 2009 when she was discharged. She received a verbal warning for attendance on February 13, 2009 for missing nine days of work in her first two months of employment. The claimant was a no-call/no-show on March 24, 2009 and received a written warning for attendance on March 25, 2009. Her last day of employment was May 5, 2009 and she had the next two days off work. The claimant was then a no-call/no-show on May 8 and 9, 2009 and was discharged at that time.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for excessive unexcused absenteeism. She contends she was told by the assistant housekeeper on May 6, 2009 not to return to work if she did not have a doctor's note. The evidence does not support her contention since she was not scheduled on May 6, 2009 and a doctor's note was not required even when she was absent due to illness on May 4, 2009. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Id.

The claimant had been warned that her attendance was a problem and the absence that resulted in her last warning was a no-call/no-show. Two consecutive no-call/no-show absences can constitute job misconduct. Boehm v. IDJS, (Unpublished, Iowa App. 1986). The employer has met its burden. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 2, 2009, reference 01, is modified with no effect. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs