

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE T HUMPHREY
Claimant

APPEAL NO: 07A-UI-03302-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES LLC
Employer

**OC: 03/04/07 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Diane T. Humphrey (claimant) appealed a representative's March 30, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 17, 2007. The claimant participated in the hearing. Sara Frank appeared on the employer's behalf and presented testimony from one other witness, Lori Jackson. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 9, 1999. She worked full time as a slot attendant at the employer's casino. Her last day of work was March 3, 2007. The employer suspended her on March 6 and discharged her on March 7. The reason asserted for the discharge was having two no-call, no-shows in 12 months.

The claimant was a no-call, no-show for a mandatory meeting on May 30, 2006. As a result, she was given a final warning that if she had another no-call, no-show within the year she would be discharged. The claimant was then a no-call, no-show for a 2:00 p.m. to 10:00 p.m. shift on Sunday, March 4. The claimant often was scheduled off on Saturdays, Sundays, and Mondays, and she had not originally been scheduled to work on this Sunday when the schedule was originally posted. On February 25 the schedule was changed and the claimant was added for the 2:00 p.m. shift. The claimant was working an overnight shift on February 25, as was Ms. Jackson, a graveyard shift manager. A general announcement was made over the employer's radio system, but the claimant did not hear that announcement. At approximately 2:30 a.m. Ms. Jackson stepped into the room in which the claimant was working and mentioned that there had been changes made to the schedule. The claimant did not understand that Ms. Jackson meant there had been a change to the previously posted schedule, but believed

Ms. Jackson was referring to upcoming schedules that had been under discussion in which the claimant was going to be scheduled off on Mondays and Tuesdays.

In the past when there had been a change to a previously posted work schedule the employer had put up a memo to employees regarding the changes or had put a note into the affected employee's files. There had not been such a notice in this instance.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is her being a no-call, no-show for work on March 4, 2007 after the warning on May 30, 2006 specifying she would be discharge if she was a no-call, no-show for work in the next year. Under the circumstances of this case, the claimant’s no-call, no-show on March 4 was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative’s March 30, 2007 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs