

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ANGELA R STEWART
123 S 9TH ST W
NEWTON IA 50208

NEWCO FOODS INC
COUNTRY KITCHEN RESTAURANT
1400 W 18TH ST S
NEWTON IA 50208

Appeal Number: 05A-UI-06128-HT
OC: 05/22/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Angela Stewart, filed an appeal from a decision dated June 9, 2005, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 28, 2005. The claimant participated on her own behalf. The employer, Country Kitchen, participated by General Manager John McCollum.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Angela Stewart was employed by Country Kitchen from September 28, 2001, until May 20, 2005. She was a part-time food preparer.

On February 22, 2005, the claimant received a written warning from General Manager John McCollum. Ms. Stewart had called in absent due to illness the week before, but later that same day the general manager had encountered her at a local convenience store. The warning discussed that absence and prior ones, as well as her failure to follow the schedule and eating food without having a "meal ticket." She was advised further incidents could lead to further disciplinary action.

The claimant was scheduled to work at 8:00 a.m. on May 19, 2005. The evening before, she came into the restaurant and told Assistant Manager Ken McCollum that she would most likely not be in the next day. Ms. Stewart had heard, from one source or another, she was going to be arrested the next day for disorderly conduct. She was actually arrested late the night of May 18, 2005, but was never incarcerated and was released on her own in the early hours of the morning. However, she still did not report to work because she had a court appearance later in the morning.

On May 20, 2005, Ms. Stewart contacted the general manager to assure him she would be in as scheduled on May 21, 2005. However, at that time, she was told she was being discharged for "not valuing [her] job" enough.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

Iowa Code section 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).

871 IAC 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.

The claimant had been advised her job was in jeopardy as a result of her attendance and other performance issues. In spite of the warning, she was absent May 19, 2005, due to personal legal problems. Even though she reported her absence, it was not excused, because matters of purely personal consideration are not considered excused. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The claimant was discharged for excessive absenteeism after being warned. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of June 9, 2005, reference 01, is affirmed. Angela Stewart is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/kjw