

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY J HAMMES
Claimant

APPEAL NO. 10A-UI-06739-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA DEPARTMENT OF HUMAN
SERVICES/GLENWOOD**
Employer

**Original Claim: 04/04/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Mary Hammes, filed an appeal from a decision dated April 26, 2010, 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, 2010. The claimant participated on her own behalf. The employer, Iowa Department of Human Services/Glenwood (Glenwood), did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Mary Hammes was employed by Glenwood from March 31, 2008 until April 6, 2010 as a full-time residential treatment worker on the 2:00 p.m. to 10:30 p.m. shift. On February 15, 2010, she called in absent for her shift. Later that evening she went out to a local restaurant and bar, where she was seen drinking a cocktail. She admitted to this and was suspended pending investigation. Supervisor Kathy King discharged her on April 6, 2010, for falsification of the absences.

The claimant filed a grievance with the union and was reinstated in her job June 10, 2010.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The claimant was discharged from her job and was reinstated after a union grievance. She was not paid during that two-month period, which the administrative law judge considers to be the equivalent of a disciplinary suspension. Under the provisions of the above Administrative Code section, a disciplinary suspension has the same criteria for disqualification as a discharge.

In the present case, the claimant called in sick and then, during the time she would have been working, went to a local bar and drank alcohol. Certainly if she was well enough to drink alcohol, she was well enough to have gone to work, even if it was mid-shift. The claimant expected, by calling in sick, to be paid for hours she did not work but then elected to use that time to entertain herself at a local bar and consume alcohol. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of April 26, 2010, reference 01, is affirmed. Mary Hammes is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw