

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE L BECKLEY
Claimant

G M R I INC
Employer

APPEAL NO: 10A-UI-00742-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/06/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated December 30, 2009, reference 01, that held the claimant was not discharged for misconduct on December 5, 2009, and benefits are allowed. A telephone hearing was held on February 24, 2010. The claimant participated. The employer did not participate.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time server from February 6, 2006 to December 4, 2009. The claimant was discharged when she reported to work on December 5th for failing to work a shift the day before. The claimant had received no prior disciplinary warning for this type offense, and she was not given an opportunity to explain. The claimant worked from 11:00 a.m. to about 3:00 or 4:00 p.m. on December 4 and left work at the end of her shift. The restaurant seating chart that she relies on for scheduling did not show she was assigned to work a further shift.

The employer failed to respond to the hearing notice.

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on December 5, 2009.

The employer failed to participate in this hearing to show any claimant misconduct in missing a work shift.

DECISION:

The department decision dated December 30, 2009, reference 01, is affirmed. The claimant was not discharged for misconduct on December 5, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs