

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

LINDA D OBRECHT
430 E LINCOLN
MISSOURI VALLEY IA 51555

ERIKSEN INVESTMENT CO
SUPER 8 MOTEL
PO BOX 610
BLAIR NE 68008-0610

Appeal Number: 05A-UI-01295-HT
OC: 01/19/05 R: 01
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, Linda Obrecht, filed an appeal from a decision dated January 31, 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 February 22, 2005. The claimant participated on her own behalf. The employer, Super 8 Motel, participated by General Manager Danette McIntosh, and Housekeeper Deb Morrow.

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: Linda Obrecht was employed by Super 8 Motel from January 21, 2004 until January 9, 2005. She was the head housekeeper.

Ms. Obrecht was warned about her poor attendance in an evaluation of May 3, 2004, plus she received several verbal warnings from General Manager Danette McIntosh. The absences were due to lack of transportation, personal problems, and some illnesses. On December 20, 2004, she received a final written warning, which advised her she could not miss any more work unless it was excused by a doctor. If she was going to be absent she must contact Ms. McIntosh directly.

On January 8, 2005, the claimant called the front desk clerk and said she would be absent because her car would not start. She was in another town and using a friend's phone, and it did not have long distance. The clerk notified Ms. McIntosh who said that when the claimant reported for work the next day, to have her call before starting work. On January 9, 2005, the claimant called the general manager and explained her car would not start and that was why she had been absent the day before. Ms. McIntosh offered to give her "another chance" if she would promise to be at work as scheduled. Ms. Obrecht said she could not guarantee it, especially if she had car problems. The general manager then said she had no choice but to discharge the claimant.

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, (7) provide:

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).

(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 absenteeism. She also knew that she was required to contact Ms. McIntosh directly and to have a doctor's statement if the absence was to be excused. Her final absence was due to transportation problems which is not an excused absence, and was not even properly reported. See Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). Ms. Obrecht had excessive absenteeism throughout her employment, not all of which were properly reported and excused. The final incident was certainly unexcused. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of January 31, 2005, reference 01, is affirmed. Linda Obrecht is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjf