

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

NICOLE J BETTIS  
TRLR 21  
2507 - 214<sup>TH</sup> ST N  
PORT BYRON IL 61275-9451

JOHN HAMMONS HOTELS  
MANAGEMENT LLC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04061-SWT  
OC: 03/12/06 R: 12  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 3, 2006, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on May 1, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Jill Julius participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked for the employer as a line cook for the employer from September 5, 2001, to March 7, 2006. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer at least three hours before the start of their shift if they were not able to work as scheduled. The claimant had a history of attendance problems for which she was warned on May 9, 2004; April 23, 2005; and May 20, 2005.

The claimant was late to work due to oversleeping on February 4 and 17, 2006. On February 21, 2006, the claimant was absent from work because she had been up too late the night before and overslept. She did not call in until 2.5 hours after the start of her shift. On February 23, 2006, the employer issued a final warning to the claimant because of her attendance problems in February. She was informed that if she missed work again without proper notice she would be discharged.

On March 5, 2006, the claimant was scheduled to work at 11 a.m. In the morning, the claimant felt ill due to a head cold. She called in the morning but there was no answer and she did not leave a message. She fell asleep and woke up in the afternoon. She called her supervisor who asked her to come in. She told him that she was ill and would not be in.

On March 7, 2006, the claimant was discharged because she had violated the attendance policy and the final warning she had been given by being absent without proper notice to the employer.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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, (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's violation of a known work rule regarding proper notice of an absence was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. She had been late and absent before due to oversleeping. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated April 3, 2006, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/tjc