

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

JAMI C PAULSON
PO BOX 531
SERGEANT BLUFF IA 51054-0531

SC KIOSKS INC
ATTN MS 5001
PO BOX 961090
FORT WORTH TX 76161-5001

Appeal Number: 06A-UI-02203-HT
OC: 01/22/06 R: 01
Claimant: Respondent (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 employer, SC Kiosks, filed an appeal from a decision dated February 15, 2006, reference 01. The decision allowed benefits to the claimant, Jami Paulson. After due notice was issued, a hearing was held by telephone conference call on March 13, 2006. The claimant participated on her own behalf. The employer participated by Store Manager Stacey Kneifl.

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: Jami Paulson was employed by SC Kiosks from December 10, 2005 until January 20, 2006. She was a full-time sales associate.

The claimant received a written counseling on December 18, 2005, for being a no-call/no-show to work the previous day. She was supposed to call at least three hours before the start of her shift but did not do so, instead she sent a text message saying she had had a "run in with Jim Beam" the night before and was not well enough to come to work. Manager Stacy Kneifl advised her that this was not acceptable and issued the written counseling.

Ms. Paulson also received a written counseling on December 29, 2005, for being tardy to work, having personal visitors at the store while on duty and making personal phone calls. The final warning was issued because the claimant had been a no-call/no-show to work on January 19, 2006. She was scheduled to work 3:00 p.m. until 8:30 p.m. and had come into the store around 2:00 p.m. to get her paycheck. At that time, she called Ms. Kneifl's cell phone and left a message saying she would not be into work. The claimant was not aware of the policy which required three hours notice.

The message was not received until after the claimant's scheduled start time. When Ms. Paulson came in on January 20, 2006, to try and get her paycheck she was told she was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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).

The employer considers the claimant to have been a no-call/no-show to work because she did not call in at least three hours before the scheduled shift. This policy was allegedly contained in the employee handbook which was printed out for her as part of the "new hire" packet. However, the claimant has disputed that this policy is in the material and the employer has failed to provide any evidence to the contrary.

Although the other warnings were for specific and undisputed policy violations, the issue must be whether there was a current, final act of misconduct which precipitated the decision to discharge as required by 871 IAC 24.32(8). The employer did receive the message from the claimant on January 19, 2006, saying she would not be at work but it was sent only one hour before the start of the shift, and was therefore considered to be a no-call/no-show.

The administrative law judge cannot conclude the claimant violated the call-in policy since the existence of that policy in the handbook is in dispute. The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct, Cosper v. IDJS, 321 N.W.2d 6, 11 (Iowa 1982), and without documentation of the provisions of the call-in policy, it cannot meet that burden. Disqualification may not be imposed.

DECISION:

The representative's decision of February 15, 2006, reference 01, is affirmed. Jami Paulson is qualified for benefits, provided she is otherwise eligible.

bgh/kkf