

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PETER FALCK
Claimant

APPEAL NO. 08A-UI-11636-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TONIKA INC
Employer

**OC: 11/16/08 R: 03
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 5, 2008, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on December 30, 2008. Claimant participated. Employer responded to the hearing notice instructions but was not available when the hearing was called and did not participate.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a crew member and manager in training at Pizza Ranch and was employed from December 2007 until November 1, 2008 when he was discharged without having been given a reason. He had not been warned that his job was in jeopardy. The last incident occurred three or more weeks prior to the separation when the manager on duty left the store for a while and told claimant to leave when his duties were completed. When he was done, the manager had not yet returned and there were three other subordinates still on duty. He called another employee, Brenda, who was above him in the

chain of command and she told him to use her authorization number to get into the time system to see what time the manager had clocked out and left the store.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Ref. 14, 15, 26

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as a person with authority directed claimant to enter her identification number to gain access to the time record of the manager who had left during a shift, employer had not warned claimant about that or any other issue during this period of employment, and three or more weeks had passed between the incident and the discharge, employer has not established a current or final act of misconduct. Accordingly, benefits are allowed.

DECISION:

The December 5, 2008, reference 02, decision is affirmed. The claimant was discharged from employment for no current disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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