

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SUSAN M JOHNSON-VIGIL**  
Claimant

**3<sup>RD</sup> BASE BAR AND GRILL LLC**  
Employer

**APPEAL 17A-UI-13397-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/03/17  
Claimant: RESPONDENT (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 18, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 24, 2018. Claimant participated. Employer participated through Marcus Woodworth, Part-Owner.

**ISSUE:**

Was the claimant discharged due to job-connected misconduct sufficient to disqualify her from receipt of unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a bartender beginning on September 9, 2016 through November 27, 2017, when she was discharged.

The bar runs a “dice roll” game where patrons can pay a fee and roll dice to win prizes including free drinks or the “pot of money.” When she left her shift at 6:00 p.m. on November 10, the claimant counted the “pot of money” in the envelope where it was kept and determined there was \$480.00 dollars in the pot. She went to another bar where a birthday party was being held for a friend. Several of the regulars at the bar where she worked were also in attendance at the birthday party. Two regular customers came into the party and told the claimant and others at the table where they were sitting that they had won the “pot of money” playing the dice roll at the other bar. They told the claimant they had won \$380.00 dollars. The claimant told them that when she left the bar just a short time before she had counted the money and they should have won \$480.00. The claimant then also told another regular customer, Todd, that when she left the bar there was \$480.00 in the pot of money envelope and that she believed Marcus Woodworth had stolen \$100.00 dollars from the envelope and was cheating the customers who played the game. The two patrons who had won the “pot of money” returned to the bar and confronted Mr. Woodworth. Mr. Woodworth gave them a \$100.00 dollar bill. Later that same night Mr. Woodworth and the other owners reviewed the surveillance footage and saw that Mr. Woodworth had in fact given Jean and Jeanie \$480.00 when they won the pot, but had just

mistakenly told them that he had given them \$380.00. The claimant made an untrue accusation against Mr. Woodworth that she repeated to other customers.

That evening Mr. Woodworth made the decision to discharge the claimant. He did not speak to her to learn what had occurred but allowed her to continue working while he hired and trained her replacement. The claimant had no prior discipline for any conduct or behavior.

### **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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. The claimant admits she should not have made comments to patrons of the bar indicating that Mr. Woodworth had taken \$100.00 from the “pot of money” prize. She made an incorrect assumption about what the patrons had actually been given. The conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. While the employer may certainly have good reason for discharge, a one-time isolated incident of poor judgment is not sufficient to establish disqualifying misconduct. Benefits are allowed.

**DECISION:**

The December 18, 2017, (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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