

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES WARD
Claimant

APPEAL NO. 10A-UI-08502-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEAVER'S ITALIAN INC
Employer

OC: 05-02-10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 7, 2010, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on August 2, 2010. The claimant participated in the hearing. Chuck Vandenburg, Area Supervisor, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant was discharged for disqualifying job misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time team member for Weaver's Italian from April 15, 2009 to May 4, 2010. On May 11, 2009, the claimant received a written warning because dishes were put away without being cleaned to the employer's standards. On December 17, 2009, he received a written warning for being two hours late. On March 6, 2010, he called at 5:00 p.m. and said he would not be in for his 5:00 p.m. shift but would be in at 8:00 p.m. He then called back at 8:00 p.m. and said he would not be in at all. He did not find a replacement or provide a medical excuse as required by the employer's policy. On May 4, 2010, the claimant called in at 4:00 p.m. and told manager Lynette he was at the hospital with his father and she said she would try to find a replacement worker for him. When he did not hear from her after approximately 45 minutes, he called back and another manager, Kathy, told him to just come in and he said he would be there in 45 minutes to one hour. When the claimant did arrive, Lynette gave him a written warning for tardiness and the claimant was frustrated because Lynette did not find a replacement for him or call him back and when he did leave his father at the hospital and come in he received a written warning for tardiness. Soon after receiving the warning, he burned his hand on a pan and was further upset. He told the employer he was going outside to cool down and "vent" because he was "mad." After approximately 15 minutes, he called General Manager Julie on his cell phone and stated he received a written warning and did not think it was fair and Julie told him when he left to go outside and vent Lynette and Kathy wrote him up for a voluntary quit because he walked out and they felt threatened. The claimant testified he was "real mad" when he walked out to get away for awhile and the managers may

have felt threatened but he did not say or do anything threatening. He admitted raising his voice and said he was "sick and tired" of this. He felt the employer was showing favoritism and was not fair.

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.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the employer maintains the claimant voluntarily quit his employment, a voluntary quit requires intent on the part of the claimant to quit his job and in this case the claimant credibly testified he had no such intention. The claimant was upset May 4, 2010. His father was in the hospital and the employer told him it would try to find a replacement for him. Rather than let it go at that, the claimant called the employer back after not hearing from it for at least 45 minutes and was told to come

in at that time. He explained he had to go home and get ready and then would be in. When he arrived, he received a written warning for tardiness, which, under the circumstances, seems somewhat unfair because if the employer had simply told him to come in when he first called, rather than having him wait until he called back to tell him he had to work, he would not have been tardy in the first place. The claimant was understandably upset about the situation and then burned his hand, which furthered his annoyance, so he said he needed to go outside and vent. He went outside but did not leave the premises and did not tell the employer he was leaving. Additionally, he called the general manager to complain about receiving the written warning, none of which indicate an intention to voluntarily quit. The issue is thus whether his actions constitute disqualifying job misconduct. The administrative law judge concludes they do not. The claimant received two previous written warnings about tardiness during his tenure of slightly over one year with the employer. The warning May 4, 2010, seems unfair and the employer could not cite any incidents of the claimant threatening anyone in the restaurant May 4, 2010. He did tell the employer he was going outside to vent, rather than asking if he could take a break to compose himself, but neither that nor the fact he had a cell phone at work rise to the level of disqualifying job misconduct as defined by Iowa law. Consequently, the administrative law judge concludes the employer has not met its burden of proof. Therefore, benefits are allowed.

DECISION:

The June 7, 2010, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw