

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

MARY E DALEY  
3839 – 16<sup>TH</sup> ST  
DES MOINES IA 50313-3034

CY CORPORATION  
c/o G&R BOOKKEEPING  
1412 – 6<sup>TH</sup> AVE  
DES MOINES IA 50314

Appeal Number: 06A-UI-08157-HT  
OC: 07/09/06 R: 02  
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, Mary Daley, filed an appeal from a decision dated August 3, 2006, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 29, 2006. The claimant participated on her own behalf. The employer, Cy Corporation, participated by Owner Cy Scales and Manager Kimberly Cresta.

#### 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: Mary Daley was employed by Cy Corporation from January 2005 until June 29, 2006. She was a full-time bartender.

On June 18, 2006, Owner Cy Scales told the claimant he was giving her two-weeks' notice that she was being discharged. There had been complaints from customers about her conduct, engaging in arguments either over the phone or at the bar, with her boyfriend. She was often disoriented at the bar, failing to serve the customers promptly and correctly, and her money handling was incautious.

On June 23, 2006, Manager Kimberly Cresta came into the bar to relieve Ms. Daley and discovered her in an argument on the phone with her boyfriend. She was using profanity and accused him of "fucking around." After she hung up, the manager observed her staggering as she walked and being unsteady on her feet, with slurred speech. Shortly after that the claimant's boyfriend came in to the bar with a female friend. Ms. Daley accused the friend of being a whore and then Ms. Cresta told them to leave. She consulted with Owner Cy Scales and the decision was made to discharge the claimant effective June 29, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of her unemployment benefits.

Iowa Code § 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 claimant had been advised her job was in jeopardy as a result of her inappropriate conduct while on duty. Instead of conducting herself more appropriately she continued to argue with her boyfriend in the presence of customers and neglect her duties. The customers continued to complain and she continued to have confrontations with her boyfriend by phone and at the bar. The customers obviously found the presence of the claimant to be disruptive which impaired the employer's business. This is conduct not in the best interests of the employer and the claimant is disqualified.

#### DECISION:

The representative's decision of August 3, 2006, reference 01, is affirmed. Mary Daley is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/pjs