

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN R BROWN

Claimant

APPEAL NO. 12A-UI-01428-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCGUIGAN ENTERPRISES INC

Employer

OC: 01/01/12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

John R. Brown filed a timely appeal from an unemployment insurance decision dated February 3, 2012, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, March 26, 2012, with Mr. Brown participating and being represented by Justin Gross, attorney at law. President Mike McGuigan participated for the employer.

ISSUES:

Was the separation a quit or a discharge?

Was the separation a disqualifying event?

FINDINGS OF FACT:

John R. Brown was employed at The Radish restaurant owned and operated by McGuigan Enterprises, Inc. from the spring of 2009 until December 31, 2011. After a dispute with a coworker on the evening of December 30, 2011, Mr. Brown told President Mike McGuigan that he would be looking for a new job and would give Mr. McGuigan two weeks' notice when he had obtained one. Mr. McGuigan did not allow Mr. Brown to work on the following day.

REASONING AND CONCLUSIONS OF LAW:

The first step in analysis is to characterize the separation. Mr. McGuigan testified that Mr. Brown had said that he was resigning "at the end of the year," the very next day. Mr. Brown testified that he did not give a formal notice, only advance warning that he would be leaving sometime in the indefinite future. Mr. Brown testified that four other individuals, all employees of McGuigan Enterprises, Inc., heard Mr. Brown's statements. None of these individuals were called to testify.

Mr. Brown's version of the conversation is more plausible. One might be expected to resign immediately or to give two weeks' notice in a moment of frustration. The administrative law

judge does not find it likely that an individual would say on December 30 that he was resigning "at the end of the year." The administrative law judge accepts the claimant's version as the more accurate. The separation is better characterized as a discharge.

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 proof. See Iowa Code section 96.6-2. It is difficult for an employer to establish misconduct while at the same time arguing that the separation was not a discharge. The evidence establishes a confrontation between Mr. Brown and a coworker on December 30. Mr. McGuigan himself testified, however, that the night was very busy and that personnel disputes are part of the restaurant industry. The question of the advisability of the discharge is not before the administrative law judge. The only question is whether the evidence establishes misconduct to such a degree as to warrant the denial of benefits. The administrative law judge concludes that the evidence does not establish disqualifying misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated February 3, 2012, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw