

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIJJEAN JOHNSON**  
Claimant

**APPEAL NO. 13A-UI-00684-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GMRI INC**  
Employer

**OC: 12/16/12  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, GMRI, filed an appeal from a decision dated January 10, 2013, reference 01. The decision allowed benefits to the claimant, Dijean Johnson. After due notice was issued a hearing was held by telephone conference call on February 20, 2013. The claimant participated on his own behalf. The employer participated by Service Manager Shannon Guard and General Manager Doug Schleimer.

**ISSUE:**

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

**FINDINGS OF FACT:**

Dijean Johnson was employed by GMRI from January 14, 2009 until December 11, 2012 as a full-time server. Servers collect money from the patrons during the course of their shift. Toward the end of the shift they are to do “side work” which is cleaning the area, rolling silverware and napkins, and stocking. When that is done they print out from the computer a report of what money is owed to the restaurant. The report is to be signed by a “checker” to confirm the side work was done, and then a manager. After that the print out is taken to the bartender and the server pays the money owed to the restaurant.

On December 11, 2012, a checker informed Service Manager Shannon Guard Mr. Johnson had not had her sign the report. The printout was examined by Ms. Guard and the claimant had signed it himself but no checker or manager had signed it. She examined earlier report and found two others which had either not been signed by a checker or by a manager.

The bartenders who had “checked out” Mr. Johnson with these incomplete reports were counseled but Mr. Johnson was fired. It was alleged he had falsified the printouts by not having them signed.

## REASONING AND CONCLUSIONS OF LAW:

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 claimant was discharged because he did not have his print out signed by both a checker and a manager on three occasions. There is no evidence he in anyway claimed money to which he was not entitled, only that the reports were not signed. This might be considered a violation of the employer's policy warranting discharge except for one thing. The bartenders, who completed the transactions on three occasions with paperwork not completed correctly, were not disciplined except being "talked to." In cases such as this it takes "two to tango" and if the bartender had followed policy as required, he or she would have sent the claimant back to get the proper signatures before completing the transaction. This was not done.

The administrative law judge considers that if the employer did not feel the bartender had erred in allowing the "cash out" to proceed with inadequate documentation, then the claimant cannot be held more at fault. He did not forge anyone's signature or alter the records so there was no falsification of any company records. The employer has failed to meet its burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Disqualification may not be imposed.

**DECISION:**

The representative's decision of January 10, 2013, reference 01, is affirmed. Dijean Johnson is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs