

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

COLRITA E HEM
Claimant

APPEAL NO. 18A-UI-09850-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPLE CORPS LP
Employer

OC: 09/09/18
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Apple Corps LP, the employer, filed a timely appeal from a representative's unemployment insurance decision dated September 24, 2018, reference 01, which held the claimant, Colrita Hem, eligible to receive unemployment insurance benefits, finding that the claimant was dismissed from work on September 7, 2018, under non-disqualifying conditions. After due notice was provided, a telephone conference hearing was held on October 10, 2018. Claimant participated. Participating on behalf of the claimant was Ms. Paige Fiedler, Attorney at Law. The employer participated by Mr. Justin Trenkamp, Director of Operations.

ISSUE:

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Colrita Hem was employed by Apple Corps LP, d/b/a Applebee's Restaurant, from November 23, 2001 until September 7, 2018, when she was discharged from work. Ms. Hem held the position of full-time Hospitality Manager and was paid by salary. Claimant's immediate supervisors were Ms. Traci Swanson and Mr. Justin Trenkamp.

The claimant was discharged on September 7, 2018, because she had closed the restaurant at 9:49 p.m. on the night of August 29, 2018, prior to the restaurant's scheduled 11:00 p.m. closing time. The employer believed that Ms. Hem had not sufficiently notified the company of the reasons for closing early and believed that the claimant had not tried to secure a replacement before closing early.

On the evening of August 29, 2018, Ms. Hem was the only manager at the facility. She unexpectedly walked into an area where an employee had dumped cooking spices. The dust

and spice ingredients caused Ms. Hem to have an immediate allergic-type reaction, causing her to be short of breath, unable to speak, and become confused. Ms. Hem attempted to take prescription medication that she had been prescribed for the condition. Ms. Hem was aware that hourly employees were attempting to contact company management to inform them of her medical condition and secure a replacement manager. Ms. Hem stayed at the restaurant as long as possible to see that all necessary duties were being accomplished. When no replacement arrived, Ms. Hem made a decision to close the restaurant early so that she could go and use prescribed medication that she had at home. or go to the emergency room. Ms. Hem knew that company policy required that a manager be on duty. Ms. Hem believed that the other employees had contacted another manager later at approximately 11:30 that evening. Ms. Hem sent a text message to Ms. Swanson to inform her that her medical condition. The claimant was allowed to work another full week before being discharged. During the week, Ms. Hem had requested on three occasions that Ms. Swanson do a report about the incident that stated that it was necessary for Ms. Hem to close early for a serious medical reason.

The employer was aware of Ms. Hem's medical condition and her reaction to the spices in the work place, as Ms. Hem had previously filed a worker's compensation claim because of the medical reaction she was having to spices in the work place. After reviewing the matter, a management decision was made to terminate Ms. Hem because of the employer's belief that she closed the restaurant without notifying management or securing a replacement in violation of company policy. The claimant was not asked to give her side during the investigation.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional work-related misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges the claimant for reasons that constitute work-connected misconduct. Iowa Code Section 96.5(2)a. The employer has the burden of proof in establishing job disqualifying misconduct as defined by the Unemployment Insurance Law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of the discharge is not the issue in this matter. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct that precludes the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrong-doing or repeated carelessness or negligence that equals willful misconduct and culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000). Inefficiency, unsatisfactory conduct, or unsatisfactory performance due to inability or incapacity, good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. Rule 871 IAC 24.32(1)a;

In the case at hand, the evidence in the record establishes that Ms. Hem had a verifiable medical condition that was made worse by contact to spices in the work place. On the night in question, the claimant was unexpectedly exposed to spice dust and suffered a medical reaction at work. Hourly employees were aware of the situation and attempted to contact other management personnel to inform them and to secure a replacement manager. Ms. Hem stayed working as long as possible. Because the claimant had been instructed previously by Traci Swanson that, in this type of an emergency situation, she should close the store and seek medical help, Ms. Hem closed the restaurant although no replacement had arrived because her medical condition was becoming worse. Later that evening, the claimant sent a text message to Ms. Swanson to fill Ms. Swanson in on what had taken place since the store had closed.

The question before the administrative law judge in this case is not whether the employer had a right to discharge Ms. Hem for this reason, but whether the discharge took place under disqualifying conditions under the Employment Security Law. While the decision to terminate Ms. Hem may have been a sound decision from a management viewpoint, the administrative law judge concludes that the claimant's conduct did not rise to the level of intentional work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits. The claimant was faced with an emergency situation and re-acted to the best of her ability. She believed that other employees had given notice to upper management of the emergency situation and that she needed to close the store. The claimant was discharged under non-disqualifying conditions. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The representative's unemployment insurance decision dated September 24, 2018, reference 01, is affirmed. Claimant was dismissed from work under non-disqualifying conditions. Unemployment insurance benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs