

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY L BUCH
Claimant

APPEAL NO. 08A-UI-02884-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE CHUCKWAGON
Employer

**OC: 02/10/08 R: 03
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

The Chuckwagon filed an appeal from a representative's decision dated March 11, 2008, reference 01, which held that no disqualification would be imposed regarding Amy Buch's separation from employment. After due notice was issued, a hearing was held by telephone on April 8, 2008. Ms. Buch participated personally and Exhibits A and B were admitted on her behalf. The employer participated by Darwin Schlotterbeck, Owner, and Lisa Hosek, Bartender/Cook. The employer was represented by John Mossman, Attorney at Law.

ISSUE:

At issue in this matter is whether Ms. Buch was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Buch was employed by The Chuckwagon from January until December 15, 2007. She was last employed part time as a bartender, cook, and waitress. She was discharged for closing the establishment early on December 15 and providing false information regarding her hours worked that day.

Ms. Buch was scheduled to work from 5:00 p.m. on December 15 until 1:00 a.m. on December 16. She left at approximately 6:15 p.m. to go to a party at another establishment and did not return until approximately 8:00 p.m. She did not deduct the time she was gone from her time sheet. She called a coworker at approximately 9:30 p.m. with a question related to rotating stock. Ms. Buch closed the bar at 10:00 p.m. but did not seek permission from the owner before doing so. The owner became aware of the early closure when another employee called on December 15 to report that she attempted to go to the bar at 9:30 p.m. but found the door locked. The other employee called the owner between 9:45 and 10:00 p.m. The owner then called the bar but the telephone was not answered. Ms. Buch indicated on her time sheet that she worked until 11:30 p.m. on December 15.

On December 17, Ms. Buch was told that she was being removed from the schedule pending an investigation of her actions. She was discharged a week later. There had been prior issues regarding cash handling but Ms. Buch had not been disciplined regarding those matters. There was also an allegation that she wrote disparaging comments about coworkers on menus but the employer was not able to verify that she was, in fact, responsible for the comments.

Ms. Buch filed a claim for job insurance benefits effective February 10, 2008. She has received a total of \$752.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that the employer has satisfied its burden of proof. Ms. Buch closed the bar three hours before her shift was to end and she did so without first checking with the owner. The number of customers who may have come to the bar after 10:00 p.m. is unknown. Therefore, it is impossible to assess the financial loss to the employer. However, it seems reasonable that the general public would expect a bar to be open at 10:00 p.m. on a Saturday night. It was reasonable for the employer to expect that the bar would remain open until the end of Ms. Buch's shift unless permission was granted to close earlier.

There was no emergency that required Ms. Buch to close early on December 15. It appears that she closed early so that she could return to the party she went to earlier that evening at a neighboring establishment. Closing the establishment early for personal reasons without the owner's consent constituted a substantial disregard of the standards the employer had the right to expect. Moreover, in addition to closing early, Ms. Buch provided false information on her time sheet for December 15. She indicated she worked from 5:00 p.m. until 11:30 p.m. However, she was gone for almost two hours earlier in her shift and left for the day at 10:00 p.m. The falsification of her time records had the potential of her receiving pay for twice as many hours as actually worked on December 15. The administrative law judge considers this theft, which is clearly contrary to the type of behavior an employer has the right to expect.

For the reasons stated herein, the administrative law judge concludes that substantial misconduct has been established by the evidence. Accordingly, benefits are denied. Ms. Buch has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated March 11, 2008, reference 01, is hereby reversed. Ms. Buch was discharged by The Chuckwagon for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages

for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Buch has been overpaid \$752.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs