

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

STEFANIE K MILLER
3832 WATEVIEW CT SW
CEDAR RAPIDS IA 52404

BRINKER IOWA INC
ROMANO'S MACARONI GRILL
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 05A-UI-08866-DWT
OC: 07/24/05 R: 03
Claimant: Respondent (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Romano's Macaroni Grill (employer) appealed a representative's August 16, 2005 decision (reference 01) that concluded Stefanie K. Miller (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 14, 2005. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 15, 2004. The claimant worked as a server.

In January 2005, the employer gave the claimant a verbal warning for an attitude problem. During her shift on July 13, the employer did not have enough servers for the number of customers who came to eat. The employer's restaurant was a lot busier than anyone expected that day. The claimant was stressed because there were not enough servers and food orders took longer than usual. When the claimant complained about the amount of time it took her food orders to get to customers, the person who notified servers when food orders were ready became upset with the claimant. When one of the food orders for the claimant was ready, this person exhibited an attitude when she told the claimant to take her food order and then stomped off. This person's attitude set the claimant off to the point she lost "her cool." In frustration the claimant made the remark that maybe this person should go cry to Todd, the manager on duty.

After the manager learned about this remark, he told the claimant the employer could not allow her to make this type of comment at work. The employer sent the claimant home early for making this remark. The next day, the employer discharged the claimant for making the remark the night before.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected 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 a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had compelling business reasons for discharging the claimant. The facts indicate that prior to July 13, the claimant's job was not in jeopardy and there had not been any incidents or comments of a similar nature prior to July 13, 2005. As a result of being short-handed, the claimant was not only stressed and frustrated, she made an isolated, unprofessional hotheaded comment without thinking about the consequences of her words. Even though the employer may have had compelling reasons for discharging the claimant, this

isolated, hotheaded, spur-of-the-moment comment does not rise to the level of work-connected misconduct. Therefore, as of July 24, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 16, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of July 24, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw