

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER L JONES
Claimant

APPEAL NO. 07A-UI-02333-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

W R RESTAURANTS
Employer

OC: 01/28/07 R: 01
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Christopher Jones filed an appeal from a representative's decision dated February 23, 2007, reference 05, which denied benefits based on his separation from Minerva's of Sioux City. After due notice was issued, a hearing was held by telephone on March 26, 2007. Mr. Jones participated personally. The employer participated by Calvin Byrd, Sous Chef, and Chad Olson, Executive Chef.

ISSUE:

At issue in this matter is whether Mr. Jones 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: Mr. Jones was employed by Minerva's of Sioux City from November 22, 2006 until January 28, 2007. He was last employed full time as a line cook. He was discharged for using profanity on the job.

The employer has an open-air kitchen where patrons can see the cooks at work. The nearest guest table is approximately ten feet from the kitchen. Mr. Jones was upset on January 28 and was slamming pans on the stove harder than required. He stated at one point, "Fuck this place." His tirade continued for approximately one hour, during which the sous chef attempted to calm him down. At least one customer complained about the language and conduct. The kitchen staff does sometimes use profanity in the kitchen but under their breath. As a result of the incident, Mr. Jones was discharged on January 29, 2007. The above incident was the sole reason for the discharge.

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). Mr. Jones was discharged as a result of the incident of January 28, 2007. Not only was he slamming pans, he also used profanity. If the incident had occurred in an enclosed kitchen area, the administrative law judge might be inclined to view it as a single "hot-headed" incident. However, because of the layout of the employer's kitchen, the conduct took place in full view of customers. Moreover, Mr. Jones did not stop the conduct when told to calm down.

When customers have an unpleasant dining experience, they may choose not to return to the establishment or to recommend the business to others. Mr. Jones' conduct of January 28 had the potential of jeopardizing the employer's business. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established. Accordingly, benefits are denied.

DECISION:

The representative's decision dated February 23, 2007, reference 05, is hereby affirmed. Mr. Jones was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs