

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA L SMITH
Claimant

APPEAL NO. 11A-UI-01657-PT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRONTIER MGMT CORP
Employer

**OC: 12/19/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 4, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 9, 2011. Employer participated by Cary Curtis, human resources manager and Angela Brown, bar manager. Claimant participated personally. Employer Exhibits 1-9 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was employed from November 12, 2007 through December 20, 2010. Claimant was discharged because when she was working manager on duty on December 10, 2010 an employee was drinking while on duty; allowed drinks to be given out as complimentary but was unable to immediately explain why; taking too many smoke breaks; not watching labor costs; and allowing employees to sit on the cooler behind the bar when they should have been working. Claimant did not know this employee was drinking while on duty. She eventually was able to recall that the complimentary drinks were given to a group that was having a family celebration in the facility. She did not send the employee home immediately because he was still waiting on a table at that time. The claimant did allow an employee to sit on the cooler for up to an hour on December 10, 2010. Claimant acknowledges that she took smoke breaks but was only absent for a minute or two, accomplished her work tasks and had not been warned that her smoke breaks were unacceptable.

Claimant had been issued warnings for not being in uniform and for poor attitude. She had also received a performance coaching for not making sure a cash drop was made safely.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

December 10, 2010 was the first night as a test that claimant worked as manager on duty as she had expressed interest in a bar superintendent position. Claimant's choice regarding sending the employee home was at most an error in judgment but it was made in good faith as she thought it would be better for customer relations. Claimant should have exercised better supervision over the other employee insofar as drinking and sitting on the cooler but failure in good performance is not disqualifying misconduct. While there was an allegation that claimant was drinking the employer acknowledged that the surveillance cameras did not show claimant drinking and claimant denies such. Claimant had never been warned about excessive smoke breaks previously and while this may be grounds for misconduct the evidence in this record fails to establish such is the case here. The employer certainly may have grounds for terminating the claimant's employment but the employer has not established disqualifying misconduct.

DECISION:

The decision of the representative dated February 4, 2011, reference 01, is affirmed. Benefits are allowed, provided the claimant is otherwise eligible.

Ron Pohlman
Administrative Law Judge

Decision Dated and Mailed

rrp/pjs