

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADAM J MEADE**  
Claimant

**APPEAL NO. 11A-UI-03808-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BIAGGI'S RISTORANTE ITALIANO LLC**  
Employer

**OC: 02/20/11  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 22, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on May 19, 2011. Claimant participated with former coworker Katie Bieber and was represented by John Singer, Attorney at Law. Employer participated through managing partner Andy Crouse and dining room manager and immediate supervisor David Downs.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a server and was separated from employment on February 20, 2011 because of an undefined "management decision." He was tardy on that date. Claimant called at 11:40 to tell Downs he would be late and arrived 5 minutes later and was fired. He thought he was scheduled at noon and looked at his schedule on his phone online and saw that he was scheduled. He never told Downs he was tardy because of oversleeping, never missed work or was tardy because of his other job, and was never tardy because of a schedule mix up. He had no verbal or written warnings about attendance or tardiness. The reason for the history of alleged tardiness stems from circumstances surrounding pre-shift meetings when management told him not to clock in for the meetings and said they would clock him in later, but did not or did not adjust the time card to reflect timely arrival. He often took tables before or during the pre-shift meeting. He was not paid for the mandatory pre-shift meetings. A week earlier claimant called the corporate office to report harassment and morale problems at the restaurant. Crouse found out about it from the district manager and spoke to claimant the next day. A manager told Bieber claimant was discharged "for his own good." She knew claimant to be punctual. Bieber clocked in many times late and was told not to clock in until after she had finished setting up a banquet or if she was close to working overtime hours.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was merely an isolated incident and inasmuch as employer

had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

Requiring an hourly employee to work off the clock is not legal. The issue of any unpaid wages because of being instructed to clock in after starting work or after mandatory staff meetings is within the purview of Iowa Workforce Development's Division of Labor.

**DECISION:**

The March 22, 2011 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/pjs