

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RASHONDA R MCCONDICHIE**  
Claimant

**APPEAL NO. 11A-UI-02352-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SLB OF IOWA LC**  
Employer

**OC: 01/16/11  
Claimant: Appellant (1)**

Section 96.5-2-A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 22, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 21, 2011. Claimant participated. Employer participated by Leah Sheldon, Assistant Manager, and William Forbes, Director of Shared Services. The record consists of the testimony of William Forbes; the testimony of Leah Sheldon; and the testimony of Rashona McCondicchie.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer owns and operates Panera Bread restaurants in Iowa. The claimant was employed at the restaurant in Dubuque, Iowa. The claimant was hired on January 28, 2008, as a part-time associate. Her last day of work was January 18, 2011. She was terminated on January 18, 2011.

The incident that led to the claimant's termination occurred on January 18, 2011. The claimant had come to work at 9:00 a.m. that morning. The claimant and another employee got into a disagreement over some cookies that were baking in the oven. The claimant thought the cookies were done and the other employee did not. Leah Sheldon, one of the managers on duty, decided to send the claimant home so that she could cool off. The claimant went to the back of the restaurant and was talking to Ms. Sheldon and another manager.

The employee with whom the claimant had an argument then came into the back as well. This person called the claimant a "stupid" or "fucking bitch." The claimant then physically struck this employee. A physical fight ensued and the managers attempted to separate the two employees. Ms. Sheldon was punched in the face by the claimant. Two Dubuque police

officers came into the restaurant and both the claimant and the other employee were cited for disorderly conduct. Both employees were immediately terminated.

The employer has a no violence in the workplace policy and fighting on the job can lead to termination. This policy is set forth in writing in the employee handbook and the claimant was aware of the policy.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. All employers have an interest in providing a workplace that is safe and free of violence. In Henecke v. IDJS, 533 N.W.2d 573 (Iowa app. 1995), the Court of Appeals stated that an employer has the right to expect decency and civility from its workers. The employer has the burden of proof to show misconduct.

The evidence is uncontroverted that the claimant and another employer engaged in a physical altercation that involved multiple blows. According to Ms. Sheldon, who was present when the fight occurred and who attempted to pull the employees apart, the claimant threw the first punch. Ms. Sheldon was hit by the claimant. There is no evidence that the claimant had to throw the punch to defend herself or that she fought as a matter of self defense because there

was no other alternative. See Savage v. EAB, 529 N.W.2d 640 (Iowa App. 1995) The claimant was clearly angry with the other employee over some cookies and expressed her anger in a totally inappropriate way. The employer had a policy against physical violence in the workplace. The claimant knew this policy. The employer has established misconduct. Benefits are denied.

**DECISION:**

The decision of the representative dated February 22, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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