

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN BEVERLIN
Claimant

APPEAL NO: 08A-UI-04099-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KAKAR INC
Employer

**OC: 03/30/08 R: 01
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Dawn Beverlin (claimant) appealed an unemployment insurance decision dated April 22, 2008, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Kakar, Inc. (employer), doing business as McDonald's Restaurant, for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 12, 2008. The claimant participated in the hearing. The employer participated through Erin Barr, Supervisor; Marcus Knighton, Store Manager; and Jessica Dady, Swing Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time swing manager from January 4, 2007 through March 9, 2008. The employer's work rules prohibit any employee from reporting to work under the influence of drugs or alcohol and violation of this policy will result in termination. The claimant was responsible for enforcing the employer's policies and was aware of this particular policy. On March 9, 2008 at approximately 8:00 p.m., another swing manager, Jessica Dady, came into the restaurant as a customer. She noticed the claimant was unusually loud and that she was being rude to the employees she was supervising. Ms. Dady noticed the claimant smelled like alcohol when she got close to her. Ms. Dady called Marcus Knighton, the store manager, and reported the incident. Mr. Knighton called the store to speak with the claimant but had to leave a message as the claimant could not come to the phone at that time. About a half hour later, Mr. Knighton received a call from a regular customer who reported the same complaint, that the claimant was yelling and smelled like alcohol. Before Mr. Knighton could leave his house, he received a third complaint about the claimant from another employee who was working that night. Mr. Knighton went to the restaurant and could not find the claimant out front. He found her in back on the telephone and called her name but she did not respond.

She testified she was calling the computer company because she could not remember her new computer code. Mr. Knighton also noticed the claimant smelled like alcohol and he determined she was under the influence of alcohol. He told her to go home and the claimant put her keys on the desk before she left.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 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 claimant was discharged for violating the employer's policy when she reported to work under the influence of alcohol. She denies that she was under the influence of alcohol and questions why it was not noticed until halfway through her shift. The employer believed the claimant to be a good employee and was disappointed that she had to be discharged. The preponderance of the evidence confirms that she was under the influence of alcohol on March 9, 2008. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 22, 2008, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs