

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN B BENDER
Claimant

APPEAL NO. 08A-UI-02584-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GARNISH THAT FOOD INC
Employer

**OC: 02/03/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

Garnish That Food, Inc. (employer) appealed a representative's March 7, 2008 decision (reference 02) that concluded Robin B. Bender (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant's employment was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 1, 2008. The claimant participated in the hearing. The employer responded to the hearing notice and provided a phone number in which to contact the employer's witnesses. The employer's witnesses were not available for the hearing, but a message was left on the employer's answering machine. The employer was asked to contact the Appeals Section immediately if the employer wanted to participate in the hearing. The employer did not respond to the message and did not contact the Appeals Section on April 1, 2008. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in November 2007. The claimant worked as a full-time prep cook. On February 5, the claimant was scheduled to work 5:00 a.m. to 1:30 p.m. She worked until 2:55 p.m.

When the claimant left work on February 5, no one said anything to her. The claimant had no idea her job was in jeopardy because the employer had just recently assigned her to a contract. Later on February 5, the claimant called the employer and left a message indicating she would be unable to work as scheduled on February 6 because of adverse weather conditions, ice and snow.

The next day, the claimant received a letter in her afternoon mail from the employer. The letter informed the claimant that she no longer had a job because the employer considered her to have self-terminated her employment when she did not report to work. After receiving the letter, the claimant called the employer about her job. The employer did not answer. Neither party talked to the other party after February 5, 2008.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence presented during the hearing, establishes that the employer discharged the claimant. Since the employer did not participate in the hearing, the facts do not establish why the employer discharged the claimant. The employer may have had business reasons for discharging the claimant, but the evidence does not establish that the claimant committed a current act of work-connected misconduct. As of February 3, 2008, the claimant is qualified to receive benefits based on this employment separation. (The record reveals the claimant is disqualified from receiving benefits based on another employment separation. See decision for appeal 08A-UI-02393-DWT).

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's March 7, 2008 decision (reference 02) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 3, 2008, the claimant is not disqualified from receiving benefits

based on this employment separation. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css