

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA L SMITH
Claimant

APPEAL NO. 09A-UI-04274-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLASSIC FOOD & BEVERAGE INC
Employer

**Original Claim: 02/22/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 16, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 13, 2009. The claimant participated personally and with witness Don Delaney. The employer participated by Donna Spieker, Manager. No exhibits were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant was employed as a server. She was hired in May 2007. Her last day of work was February 20, 2009. The claimant and the cook were having a dispute on February 20, 2009. Donna Spieker told both the claimant and the cook to stop their dispute. She told the claimant to shut up. Ms. Spieker told the claimant that if she left the restaurant, she was not coming back. The claimant was upset and went outside of the restaurant and called Ms. Spieker and asked her, "Are you sure you are done with me?" Ms. Spieker replied, "I am f***** tired of it. I am done with you." The claimant came back in and punched out. The claimant had received some warnings for her conduct on January 9, 2009 (commenting so customers could hear that she was sick) and on December 19 (wearing sweat pants to work).

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.

The gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 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 claimant was discharged by the employer. The claimant and the cook were engaged in a dispute on February 20, 2009. The claimant asked if she could go home and was told if she left, she would be fired. The claimant was then told that she was discharged by the employer. The employer has not proved that she committed any last act of misconduct. The employer was

dissatisfied with the claimant's work. The employer has not shown that the claimant's actions were anything more than unsatisfactory conduct.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct.

DECISION:

The decision of the representative dated March 16, 2009, reference 01, is reversed. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/kjw