

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBRA L JOHNSON
Claimant

BEATON INC
Employer

APPEAL 19A-UI-06235-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/07/19
Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Beaton (employer) appealed a representative's July 29, 2019, decision (reference 03) that concluded Debra Johnson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 28, 2019. The claimant participated personally. The employer participated by Kathy Frerichs, Controller. The administrative law judge took official notice of the administrative record.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on November 26, 2018, as a part-time crew member. She signed for receipt of the employer's handbook on November 26, 2018. The employer issued the claimant written warnings on April 18, 2019, and June 11, 2019, for failure to follow instructions and unprofessionalism. The warning indicated that further infractions could result in the claimant's termination from employment.

On July 2, 2019, the supervisor told the claimant to give the hourly manager a ride to the bank so the manager could perform a deposit. The claimant followed the supervisor's instructions, even though it was forbidden in the employer's handbook for an hourly employee to participate with a manager in a bank deposit. Nothing of note happened during the trip to the bank. The manager did not like the claimant. They used to be friends but the manager mistakenly thought the claimant was trying to sleep with her boyfriend.

On July 4, 2019, the manager told the supervisor that the claimant drank a beer while driving to the bank. On July 6, 2019, the supervisor questioned the claimant about drinking before and during work hours. The claimant denied the allegations. The supervisor terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of July 7, 2019. The employer provided the name and number of Kathy Frerichs as the person who would participate in the fact-finding interview on July 26, 2019. The fact finder called Ms. Frerichs but she was not available because she had a death in her family. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). If a party has the power to

produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's July 29, 2019, decision (reference 03) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs