IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

VICKIE EVEN
Claimant

ARAMARK CORPORATION
Employer

APPEAL NO: 15A-UI-00303-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/07/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 7, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 4, 2015. The claimant participated in the hearing. Tammy Newhoff, Food Service Director and Karen Martells, Grill Cook, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time food service worker/cashier for Aramark Corporation from June 26, 2006 to December 4, 2014. She was discharged after several warnings regarding yelling at co-workers and management.

The claimant received verbal warnings for yelling at co-workers, supervisors and management in February, June and July 2014.

On March 20, 2014, the claimant received a written warning for yelling at another associate after the claimant became upset with her co-worker because she did not believe she was performing her job to the claimant's expectations and thought that was affecting her job. The claimant yelled at the co-worker in front of Food Service Director Tammy Newhoff. The claimant did not have any supervisory authority.

On September 7, 2014, the claimant received a written warning after she became upset and yelled at an acting supervisor in the dish room and a couple of customers who were near the dish belt could overhear her and reported the incident to Ms. Newhoff.

On October 30, 2014, the claimant received a final written warning after the employer asked her to cover the register and the claimant came back and complained, stating if she "ever had to do the register again she would walk out." The claimant signed the warning without making any comments in the box provided.

On December 3, 2014, Ms. Newhoff was in the storeroom reorganizing with grill cook Karen Martells when the claimant came in to ask Ms. Newhoff to check the temperature of her turkey burgers. Ms. Newhoff finished what she was doing and went out to the grill area and another employee was cooking turkey burgers. Ms. Newhoff asked her if she checked the temperatures of the turkey burgers when she took them off the grill and the employee said yes and asked if someone had complained and Ms. Newhoff said no. Ms. Newhoff returned to the storeroom and the claimant left the grill and went to the storeroom and started yelling at Ms. Newhoff, yelling that she did not need to be out there "causing a scene" and Ms. Newhoff had "no business being out there." The claimant was very loud and customers could hear her. The incident was witnessed by Ms. Martells. Ms. Newhoff did not take action against the claimant at that moment because the restaurant was "packed with customers."

After the rush Ms. Newhoff contacted human resources. The claimant had numerous warnings, both verbal and in writing, including a final written warning in October 2014, about the tone and volume of her voice and the way in which she spoke to co-workers, supervisors and management. Ms. Newhoff had tried to counsel her about those issues but decided she could not do it any longer.

Ms. Newhoff found the claimant's behavior worsened in 2014 and asked her if anything was wrong the first few times she talked to the claimant about her behavioral issues but the claimant could not think of any problems she was experiencing that were causing her issues. The claimant would either deny yelling or state she would try to do better but her conduct did not improve.

The employer has a progressive disciplinary policy consisting of a verbal warning, a written warning, and a final written warning within one year before termination would result. After reviewing the claimant's disciplinary history and considering that her issues were not improving, the employer terminated the claimant's employment December 4, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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 claimant had received several verbal warnings before the employer issued her a written warning September 7, 2014, and then a final written warning October 30, 2014. She did not have any supervisory authority and had no business telling others, especially her superiors, what to do or what she was willing to do, especially when those duties were included in her job description. Additionally, she had absolutely no right to speak to anyone in the workplace in the tone and volume she did on several occasions.

After she received the verbal warnings, let alone the written and then the final written warning, the claimant was placed on notice that the tone and volume of her voice was unacceptable and she knew, or should have known, that her job was in jeopardy because of her behavior and those warnings.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The January 7, 2015, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/pjs