

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN T BECKER

Claimant

APPEAL NO. 13A-UI-13403-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLAZIN WINGS INC

Employer

OC: 10/27/13

Claimant: Appellant (1)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant, Justin Becker, filed an appeal from a decision dated November 27, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 30, 2013. The claimant participated on his own behalf and was represented by Hugh Albrecht. The employer, Blazin Wings, participated by Kitchen Manager Jody Winch and was represented by ADP in the person of Michelle Hawkins.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Justin Becker was employed by Blazin Wings from February 18, 2013 until October 26, 2013 as a full-time server. During the course of his employment he received two written warnings for his conduct. On July 21, 2013, he was warned when he complained the supervisor had not stopped seating people in his area when he wanted it. He argued and used inappropriate language.

On September 28, 2013, he told the greeters not to seat people in his area, which was outside his authority. He was leaving tables dirty and talking directly to the kitchen staff about his orders rather than going through the "expo" as required. That warning did indicate he could be discharged for any further problems.

On October 24, 2013, he told Kitchen Manager Jody Winch customers at one of his tables wanted to talk to her. Their order had taken a very long time. When she was able to leave the kitchen to talk to them she apologized and went back to work. Later Mr. Becker came back to her and asked if that table had been given a discount because of the long wait time. She said no, because they had not asked for one. He then told her they wanted to talk to her again.

At that time the customers said they felt they should have a discount. He became angry and asserted it was “bullshit” that they had not been given a discount, that he was the best server and by not giving a discount he was losing money due to customer dissatisfaction expressed in a poor time. This exchange occurred in an area close to customer tables and she told M. Becker they would discuss it later and he asserted “damned right we’ll talk about it later.”

The customers were given the requested discount and Mr. Becker was written up again for his conduct toward the supervisor and discharged by the general manager Steve Wakeham on October 26, 2013.

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 claimant had been advised his job was in jeopardy as a result of his conduct. He appears to have been very much of the opinion that his way is the way in which things should be done despite rules, policy and company practices to the contrary. Three warnings in less than eight months, for similar problems, shows the incident of October 24, 2013, to be part of a trend and not an isolated incident.

Mr. Becker denied everything alleged against him, always with a rationalization, but could not provide any credible reason why the employer would fabricate the warnings or the accusations in the final incident. The claimant's assertion it was too noisy for customers to have heard the comments he denied making but could not then adequately explain how the supervisor could have heard him.

The administrative law judge concludes the claimant was discharged for a final act of insubordination and inappropriate conduct. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The unemployment insurance decision dated November 27, 2013, reference 01. is affirmed. Justin Becker is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs