

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEANNE M BARNETT
Claimant

APPEAL NO. 10A-UI-13060-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

M-R NO 1 INC
Employer

OC: 09/07/08
Claimant: Appellant (2)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated September 13, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 29, 2010. The claimant participated. The employer participated by Gary Staggs, owner. The record consists of the testimony of Gary Staggs and the testimony of Leanne Barnett.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a Maid-Rite restaurant located in Oskaloosa, Iowa. The claimant worked for the employer for approximately six weeks. She had part-time hours.

The claimant's sister also worked for the employer. The sister was terminated for theft. Gary Staggs, the owner, was concerned that the claimant would overreact to her sister's termination and did not want her back in the store. He had previously seen the claimant get upset at work and use profane language. The restaurant was small and customers could easily hear what was being said by the employees. He told the claimant on March 17, 2010, that he did not want her to come back 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

There is insufficient evidence of misconduct in this record. The most reasonable inference from the evidence is that the employer wanted to avoid any potential problem with the claimant, since the claimant's sister had just been terminated for theft. The claimant had exhibited some strong reactions in the workplace before her sister's firing and the employer was concerned that she might be upset about her sister and express her feelings at work. Even assuming these concerns were justified, the potential for misconduct is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated September 13, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw