

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY EWING
Claimant

APPEAL NO. 08A-UI-00977-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SC FAMILY STEAK INC
SIRLOIN STOCKADE
Employer

OC: 01/06/08 R: 01
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from the decision of a representative dated January 25, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 12, 2008. The claimant participated. The employer participated by Suzanne Dallen and Sarah O’Connell.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant last worked for this employer from March 17, 2007 until November 2, 2007 when she was discharged from employment. The claimant held the position of full-time hot prep/cold prep cook and was paid by the hour.

Ms. Ewing was discharged after she left work prior to her ending work shift on or about November 1, 2007, displaying an angry and insubordinate demeanor in the presence of company patrons. Upon leaving the employment prior to the end of her shift, Ms. Ewing made a loud reference to her employment using inappropriate language while forcefully swinging an exit door to the facility open. The claimant’s loud inappropriate comment was heard by company patrons who commented to company management about it. Ms. Ewing had been warned in July 2007 for leaving work without authorization and had been informed at that time that further incidents of that nature would result in her termination from employment.

REASONING AND CONCLUSIONS OF LAW:

The testimony in this case is disputed. The administrative law judge having heard the testimony of the witnesses, having questioned the witnesses and having considered the matter is of the

opinion that the employer has sustained its burden of proof in establishing that the claimant's separation from employment took place under disqualifying conditions. The evidence in the record establishes that Ms. Ewing had been previously warned for a similar offense in July of 2007 and was warned at that time that she would be discharged if she left work prior to the end of her shift in the future. On or about November 1, 2007, the evidence establishes that the claimant was having a "bad day" at work and was angry and that she left her work shift prior to the 4:00 p.m. shift ending time. While leaving the claimant loudly swung an exit door open directing violent and inappropriate language regarding her employment in the presence of company patrons who were startled at the claimant's conduct and statements.

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.

For the reasons stated herein the administrative law judge concludes that the claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$800.00.

DECISION:

The representative's decision dated January 25, 2008, reference 01, is hereby reversed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$800.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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