

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON EDWARDS**  
Claimant

**APPEAL NO: 08A-UI-01404-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KITCHENS RESTAURANTS LLC**  
Employer

**OC: 01/06/08 R: 02**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jason Edwards (claimant) appealed an unemployment insurance decision dated January 30, 2008, reference 02, which held that he was not eligible for unemployment insurance benefits because he was discharged from Kitchens Restaurants, LLC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 25, 2008. The claimant participated in the hearing. The employer participated through owner Mike Hutchison and Jim McClafin of Accounting and Tax Professionals. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**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 employed as a full-time bar manager from August 2005 through January 8, 2008. He had been previously warned about talking about his dissatisfaction with his employment while working. On January 8, 2008 the employer's accountant, Jim McClafin, arrived at the bar around 3:00 p.m. to deliver payroll. Shortly thereafter, the claimant began complaining to Mr. McClafin about the owners. Mr. McClafin characterized the claimant's comments as "trashing the owners" and considered it a "loud and ugly dissertation." The claimant said the owners do not pay their bills; they take all the money and are generally greedy. He complained that the owners were selfish and did not take care of him as an employee. He also grumbled that the Christmas party being at the bar instead of having it elsewhere and then said something about how he had to move the Christmas tree.

Mr. McClafin noticed the server who was working appeared to be uncomfortable while hearing the claimant's comments. Additionally, one of the customers walked up to the bar to get a drink and after hearing the claimant's comments, she said, "So, you're still unhappy huh?" Before the claimant was done, a vendor had walked in to pick up a check and was also sitting at the bar to

hear the complaints. Mr. McClafin was bothered by the claimant's conduct and reported it to the employer the same day. Since the claimant had been previously warned about inappropriate and negative comments at work, he was discharged.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for repeatedly making derogatory remarks about the employer while he was working in the employer's facility. He had been previously warned for the same issue. The claimant contends his comments were a "good faith error in judgment." The administrative law judge finds there was no good faith involved. Employees do have the right to express their personal opinions but not while working in the employer's facility and being paid by the employer and not when their comments could adversely affect the employer's business. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as

well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated January 30, 2008, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs