IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

COLLEEN A THOMPSON
Claimant

BROADWAY SPORTS LTD
Employer

APPEAL NO: 14A-UI-05930-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/11/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 30, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for reasons that do not constitute work-connected misconduct. The claimant participated at the July 16 hearing with her witness, Stephanie Yakey-Hill. Kevin Kirlin, attorney at law, represented the employer. Gary Epstein, the treasurer, and Jamie Loveless, a part time bartender testified on the employer's behalf. Another potential witness was called for the employer, but this witness was not available when she was called.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2012. She worked for the employer as a full-time bartender. The claimant was responsible for managing the bar, ordering and scheduling.

On Saturday, April 19, Epstein knew a Firestone employee was having his retirement party at the employer's bar. The employer ordered extra beer and liquor for the retirement party. Food was being brought in from the outside. As a result of the extra beer and liquor that was purchased, the employer calculated the bar should gross around $2400 on Saturday. The claimant did not work as a bartender on April 21. She was at the retirement as a patron. Yakey-Hill and another employee worked as bartenders that night. Yakey-Hill understood Firestone employees at the retirement would receive the normal Firestone employee discount. The employer gave Firestone employees a discount every day. On April 19 Yakey-Hill charged

customers who did not work at Firestone the regular price for beer or drinks. When Epstein picked up the money from Saturday night, the bar only grossed $1960. He was upset and assumed beer and drinks had been given away at no charge or patrons had been given unauthorized discounts.

On April 21, the claimant's day off, she went to the bar and Epstein was there. She noticed her daily specials had been erased and Happy Hour had been changed. The claimant asked Epstein how those changes were going to bring in business. He then started questioning the claimant about the money made on the April 19 retirement party. The claimant and Epstein engaged in a verbal confrontation. The claimant left and walked outside. Epstein considered the claimant's conduct out of line and the claimant considered Epstein's conduct intimidating. Epstein and the claimant did not discuss the retirement party or the April 21 incident again.

Epstein decided on April 21, he had to replace the claimant. He did not say anything to the claimant about her job being in jeopardy until May 13 because he wanted to find her replacement before he discharged her. On May 13, the employer told the claimant it was time to end their working relationship and discharged her.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

> 1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
> 2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
> 3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Epstein concluded the employer lost money on April 19. The claimant asserted the employer forgot to consider the Friday night sales which were about $2000. The claimant testified the extra beer and liquor ordered had been used on both Friday and Saturday nights. The employer also concluded the claimant allowed discounts on April 19 that had not been

authorized. Since Firestone employees always received a discount and Yakey-Hill testified she charged patrons who did not work at Firestone the regular price, the facts do not support the employer's assertion that the claimant allowed unauthorized discounts on April 19.

The confrontation that occurred between the claimant and Epstein on April 21 may have been inappropriate. On April 21 the claimant questioned Epstein's authority to change daily specials and the hours for happy hour in front of customers and employees. This was the final incident that led to the employer's decision to discharge the claimant. The employer's failure to put the claimant on notice she was discharged for this incident for over three weeks does not amount to a current act of work-connected misconduct. As a result, the claimant is qualified to receive benefits.

DECISION:

The representative's May 30, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not amount to a current act of work-connected misconduct. As of May 11, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs