IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CHARLES D ROBERTSON
Claimant

MARRIOTT HOTEL SERVICES INC
Employer

APPEAL NO. 09A-UI-04422-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/15/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Charles Robertson (claimant) appealed a representative's March 13, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Marriott Hotel Services (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 15, 2009. The claimant participated personally. The employer participated by Jody Shannon, Human Resources Manager, and Aric Grell, Banquet Bartender.

ISSUE:

The issue is whether the claimant was discharged for 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 hired on April 9, 2008, as a full-time banquet steward. The claimant signed for receipt of the employer's handbook on April 10, 2008. The employer did not issue the claimant any warnings during his employment.

The claimant regularly worked with young people. He was not their supervisor but he instructed them regarding their job duties. The young people often talked about strip joints, lap dances and sexual innuendo. Aric Grell joking told a group of co-workers that the claimant liked young girls. The claimant was offended, considering his reputation. The following day Mr. Grell apologized. The claimant told Mr. Grell to stop his school boy games because when you do bad things to people, bad things happen to you. The claimant meant these words as words of wisdom. Mr. Grell immediately reported the claimant's words to the employer. The employer suspended the claimant. On or about December 15, 2008, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). The claimant made a remark that could either be taken as words of wisdom or a threat. The claimant was careless to make the statement to a co-worker who made a careless statement to him. The co-worker was not terminated but the claimant was terminated. The employer has not met its burden of proof to show that the claimant's single act of carelessness had any wrongful intent. The claimant's actions do not rise to the level of misconduct. Benefits are allowed.

DECISION:

The representative's March 13, 2009 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs