

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THRESE R REINHARDT
Claimant

APPEAL NO. 08A-UI-11479-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

G M R I INC
Employer

**OC: 11-09-08 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 3, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 22, 2008. The claimant did participate along with her witness, Marie Davis. The employer did participate through Larry Ilg, General Manager.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a waitress/server full time beginning in April 1978 through November 10, 2008 when she was discharged.

On November 3 the claimant served alcohol to a group of individuals which included a coworker David. The claimant admits that she knew that the employer's policy with regard to serving alcohol required her to "card" or ask for age identification from anyone who appeared to be under the age of 30. On November 3 the claimant served alcohol to a coworker named David whom she believed looked to be 25 years old. The claimant admits that the employer's policy requires that even coworkers who appear to be under the age of 30 must be asked to produce age identification. One of the managers noticed that David was drinking alcohol at a table and asked the claimant if she had carded him. The claimant indicated that she had not and was told by the manager that he was not 21 years old and could not legally be drinking alcohol. When the manager went to the table to remove the alcohol, David had already consumed the drink.

Serving alcohol to a minor can result in the employer's business losing their liquor license. Thirty percent of the business sales come from alcohol sales.

The claimant was asked why she did not card David and indicated she had seen him served alcohol at other establishments where he was carded. When told that David was not 21 years old, the claimant indicated that he must have been using a fake ID.

The claimant was given a copy of the employer's handbook or policy book that she admits told her to card anyone who appeared to be under the age of 30. The claimant's witness, Marie Davis indicated that she knew that she was to card anyone, including coworkers, who appeared to be under the age of 30.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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' policy does not require that the claimant verify that the age identification presented by the customer be valid, merely that it is asked for and presented to her so she can verify the customer is old enough to legally consume alcohol. The employer's policy does not allow an employee to fail to ask for age identification merely because they believe a person is old enough to legally drink alcohol if that person appears to be under 30 years of age. The claimant admits that David appeared to be 25 years old, thus she was required to ask him to present age identification to indicate he was old enough to legally consume alcohol. The claimant intentionally and deliberately chose not to ask David for age identification, despite her acknowledgement that he did not appear to be 30. The claimant was a long time employee who knew the employer's policy but chose to violate it anyway. The employer's evidence establishes

that the claimant deliberately and willfully chose to disregard the employer's policy regarding serving alcohol to customers. It is not necessary that the employer actually lose their license in order for the claimant's conduct to be considered misconduct. The claimant's willful decision not to card David was a violation of the employer's policy that jeopardized the employer's liquor license and is misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The December 3, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs