

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERALD L BIRNLEY
Claimant

APPEAL NO. 09A-UI-04914-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNCIL BLUFFS COUNTRY CLUB LLC
Employer

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

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Gerald Birnley filed a timely appeal from a representative's decision dated March 16, 2009, reference 01, which denied benefits based upon his separation from Council Bluffs Country Club LLC. After due notice was given, a hearing was held in Council Bluffs, Iowa on April 30, 2009. The claimant appeared personally and provided sworn testimony. Although duly notified, the employer did not respond to the hearing notice and did not participate.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness and having considered all of the evidence in the record, finds: Mr. Birnley was employed as a line cook for the Council Bluffs Country Club from April 2008 until June 1, 2008 when he was replaced by a new worker and discharged from employment. Mr. Birnley was employed as a full-time cook and was paid by the hour. His immediate supervisor was Jeremy Bothe.

On Sunday, June 1, 2008, Mr. Birnley reported early for his scheduled work shift and noted that another cook was performing the claimant's duties. The claimant was informed that a previous employee had been rehired and was taking the claimant's place. Mr. Birnley followed a reasonable course of action by contacting his immediate supervisor, Mr. Bothe, by telephone. The claimant was informed that the previous employee had been rehired but that the Country Club might have some use for Mr. Birnley's services in the future if business conditions warranted the claimant's services or if the claimant was needed for catering. Mr. Birnley reasonably concluded based upon statements that were made to him that he had been replaced by the other worker and laid off at that time.

Mr. Birnley repeatedly attempted to contact his immediate supervisor by telephone. The claimant's messages went unanswered leading the claimant to the reasonable conclusion that he had been discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes that the claimant was discharged from employment for no disqualifying reason.

The evidence in the record establishes that the claimant reported for scheduled work on June 1, 2008 but found that he had been replaced by a worker that had been rehired by the Council Bluffs Country Club. Mr. Birnley found the individual performing Mr. Birnley's duties. The claimant followed a reasonable course of action by contacting his immediate supervisor and at that time and was informed that the previous employee had been "rehired" but that the employer might be able to use Mr. Birnley's services in the future if business conditions warranted it or if the claimant was needed for catering work. Mr. Birnley was reasonable in his conclusion based upon those statements that he had been separated from employment at that time. When repeated calls to his immediate supervisors went unanswered and messages were not returned, the claimant further concluded that he had been discharged.

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 did not voluntarily quit employment but that he was discharged for no disqualifying reason. Unemployment insurance benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated March 16, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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