

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A COLUMBUS
Claimant

APPEAL NO: 12A-UI-06567-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRE MOUNTAIN RESTAURANTS LLC
Employer

OC: 05/13/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 30, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he was discharged for disqualifying reasons. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in November 2010. The claimant worked 12 to 35 hours a week as a dishwasher, a meat carver, and at the hot bar. The employer's violence in the work place policy does not allow employees to fight or throw anything at another person.

On May 10, 2012, the claimant was carving meat. He heard a co-worker in the kitchen complaining about the mess a "fag" left in the kitchen. The claimant had worked in the kitchen earlier, so he went to the kitchen and asked the co-worker if he was talking about the claimant. After the co-worker acknowledged he had been complaining about the claimant, the claimant told the co-worker that if he kept making comments like that, the two of them would have an issue. The claimant was very upset about the co-workers derogatory comments about him. As the claimant went back to the carving station he heard the co-worker say "fag". When the claimant heard the co-worker call him a derogatory name again, he threw an open beverage can toward the co-worker because he was so upset with him. The can did not hit the co-worker. The claimant then asked and received permission to leave work early.

The next day, the claimant reported to work as scheduled. Even though the claimant's job was not in jeopardy before May 10, the employer discharged him for violating the employer's policy by throwing a beverage can at a co-worker. The co-worker was also discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Even though the claimant's job was not in jeopardy before the May 10 incident, he violated the employer's no violence in the workplace policy. Instead of reporting the co-worker's comments to a supervisor, the claimant threw a beverage can toward the co-worker. Even though the can did not hit the co-worker, it could have. The claimant intentionally threw the can at the co-worker. While the claimant was understandably upset about the co-worker's comments, the claimant let his emotions take over his common sense.

The claimant asserted that if the employer had taken action on other employees' complaints about the co-worker, the May 10 incident would not have occurred. This may be true, but after the claimant walked away and went back to the carving table, he committed work-connected misconduct when, in anger, he threw a beverage can at the co-worker. As of May 13, 2012, the claimant is not qualified to receive benefits.

DECISION:

The representative's May 30, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for conduct that constitutes work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 13, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw