

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MICHELLE R BELLIS  
611 N 2<sup>ND</sup> ST  
SIOUX CITY IA 51103

BOYS CLUB OF SIOUX CITY INC  
823 PEARL ST  
SIOUX CITY IA 51101

AMENDED

Appeal Number: 05A-UI-08722-JTT  
OC: 07/24/05 R: 01  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Boys Club of Sioux City filed a timely appeal from the August 18, 2005, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on September 8, 2005. Ms. Bellis participated. Unit Director Pat Amundson represented the employer and presented additional testimony through Executive Secretary Roger Friessen.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michelle Bellis was employed by the Boys Club of Sioux City as a part-time cook for four years, through July 22, 2005. On July 14, 2005, Unit Director Pat Amundson advised Ms. Bellis that she was being discharged for misconduct and/or neglect in the performance of her duties. Aside from working as an employee of the Boys Club, Ms. Bellis leased a concession stand

from the Boys Club. Despite her separation from the employment with Boys Club, Ms. Bellis continues to operate the concession stand and uses the Boys Club kitchen to prepare food she sells at the concession stand.

The final incident that prompted the discharge occurred on July 14, 2005. On that date, Executive Secretary Roger Friessen was at the concession stand Ms. Bellis leases from the Boys Club and noticed mouse droppings. Ms. Bellis was working in the Boys Club kitchen at the time and Mr. Friessen went to the kitchen to discuss the mouse-dropping situation with Ms. Bellis. Ms. Bellis viewed the mouse problem at the concession stand as a matter that was her responsibility and had placed mousetraps in the concession stand to deal with the problem. Ms. Bellis only operated the stand a few days per week and thoroughly cleaned it with bleach prior to using it. During the discussion between Mr. Friessen and Ms. Bellis in the Boys Club kitchen, Ms. Bellis pointed out that despite monthly visits from an exterminator, the kitchen also had a problem with mice. Ms. Bellis directed Mr. Friessen's attention to a loaf of bread on a serving table. The loaf had been placed on the serving table the night before and the mice had fed on it overnight. Ms. Bellis did not intend to feed the children bread from the loaf, but had not taken steps to remove the loaf from the serving table prior to the conversation with Mr. Friessen. Because the partially eaten loaf of bread was on the serving table, Mr. Friessen concluded that Ms. Bellis intended to feed bread from the loaf to the children. Mr. Friessen abruptly departed from the kitchen in frustration and apparent disgust. The employer had previously discussed with Ms. Bellis its concerns about food preparation and food temperature, as well as concerns about the cleanliness of the kitchen.

Ms. Bellis has a history of anxiety and panic attacks and takes medication to address this condition. Prior to the summer of 2005, Ms. Bellis advised the employer that she intended to quit the work if the school with which she shared the kitchen returned in the fall. After that discussion, Ms. Bellis' prescription medication changed, her condition improved, the school decided not to return, and Ms. Bellis decided to continue in the employment. The employer had not commenced a search for a replacement for Ms. Bellis.

At the end of the day on July 14, Mr. Amundson summoned Ms. Bellis to a meeting at which he advised Ms. Bellis that she was being discharged in connection with the contaminated loaf of bread on the serving table. However, Mr. Amundson and Ms. Bellis reached an agreement for Ms. Bellis to stay on until a replacement cook could be hired.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Bellis was discharged for misconduct in connection with his employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). While past acts and warnings can be used to determine the magnitude of the current act to misconduct, a discharge her misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. See 871 IAC 24.32(4).

The weight of the evidence in the record fails to establish misconduct, negligence or carelessness on the part of Ms. Bellis in connection with the loaf of bread on the serving table. Instead, the evidence indicates that Ms. Bellis intended to discard the loaf of bread that had been left overnight on the service table and Mr. Friessen erroneously concluded that Ms. Bellis intended to serve the bread to the children. Based on the evidence in the record, the administrative law judge concludes there was no current act of misconduct that could serve as a basis for disqualifying Ms. Bellis for unemployment insurance benefits. Nor is there sufficient evidence in the record to establish a pattern of carelessness and/or negligence on the part of Ms. Bellis. Ms. Bellis was discharged for no disqualifying reason. Ms. Bellis is eligible for benefits, provided she is otherwise eligible. The employer's account may be assessed for benefits paid to Ms. Bellis.

DECISION:

The Agency representative's decision dated August 18, 2005, reference 02, is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be assessed for benefits paid to the claimant.

jt/kjw