**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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| **DYLAN W BEERTHUIS**<br>Claimant<br><br>**CREATIVE DINING SERVICES INC**<br>Employer | **APPEAL 16A-UI-08330-NM-T**<br><br>**ADMINISTRATIVE LAW JUDGE DECISION**<br><br>**OC: 07/10/16**<br>**Claimant: Appellant (2)** |

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 28, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for insubordination. The parties were properly notified of the hearing. A telephone hearing was held on August 18, 2016. The claimant Dylan Beerthuis participated and testified. The employer Creative Dining Services Inc. did not participate. Exhibit 1 was received into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a sous chef from October 2011, until this employment ended on July 8, 2016, when he was discharged.

On July 7, 2016, claimant's wife gave him a ride to work. While dropping him off, claimant's wife noticed one of his former coworkers, whom she had personal issues with, was there working. When claimant's wife saw the coworker she became upset and an argument began in the parking lot of the workplace. One of claimant's supervisors instructed him that his wife could no longer come to that location. Claimant's wife told the supervisor that if the former coworker was going to be there, she did not want claimant there. Claimant attempted to calm his wife down, as the former coworker was leaving. Claimant was told by his supervisor just to go home for the day. Claimant told the supervisor he was still willing and able to work, as the coworker was leaving and believed that would resolve the issue. The supervisor again told claimant to go home. Claimant asked if he was sure, and the supervisor responded he was. Claimant never refused to go to work that day.

The following day, July 8, claimant received a call from the district manager informing him that he was being discharged based on what happened the day before. Claimant had previously been written up for inappropriate text messages his wife had sent his former coworker, but was

never warned that further incidents would lead to termination. Claimant supervisor gave him no indication that if he left of July 7 that he would be terminated. Prior to the July 8 phone call claimant was unaware his job was in jeopardy.

**REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code section 96.5-2-a provides:

> An individual shall be disqualified for benefits:
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> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
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> 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.
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> 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In the present case, claimant was discharged after his wife caused a scene outside his place of employment. The testimony indicates claimant did his best to diffuse the situation, but was instructed to go home by his supervisor. Claimant offered to stay and work, indicating he believed this situation was resolved, since the other party to the argument was leaving. Claimant was nevertheless told to go home. While claimant had received one prior warning as the result of his wife's behavior, he was never specifically advised that his job was in jeopardy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant that his wife's behavior may result in termination, it did not give him a full and fair opportunity to address the problem before terminating his employment. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

**DECISION:**

The July 28, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill
Administrative Law Judge

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Decision Dated and Mailed

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