

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARYAH J COCKHREN
Claimant

APPEAL NO. 07A-UI-04703-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PAT'S TAVERN
Employer

**OC: 04/08/07 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Maryah J. Cockhren (claimant) appealed a representative's May 3, 2007 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Pat's Tavern (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 24, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on December 10, 2006, as a full time bartender. When school started in January, the claimant asked the employer to reduce her hours so she would only work part-time. The employer made this accommodation.

When the claimant was not scheduled to work, she went to work on April 2, 2007, to pick up her paycheck. The claimant called the owner because she was not at work and had the claimant's paycheck. Although the employer indicated she would bring the claimant's paycheck immediately, the claimant waited about four hours for the employer to arrive at work with her check. After the employer arrived at work, she discharged the claimant for calling the employer a liar. The claimant did not know what the employer was talking about, but did not argue with the employer. The claimant believed the employer had been drinking before she got to the bar. The claimant did not work for the employer again.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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).

The employer may have had legitimate business reasons for discharging the claimant. The evidence does not, however, establish that the claimant had ever been insubordinate to the employer or called the employer a liar. The facts do not establish that the claimant committed work-connected misconduct. As of April 8, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 3, 2007 decision (reference 02) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of April 8, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css