

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOWARD C WELLS
Claimant

APPEAL NO. 15A-UI-08704-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE PIZZA FIVE LLC
Employer

OC: 07/05/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Hawkeye Pizza Five (employer) appealed a representative's July 24, 2015, decision (reference 01) that concluded Howard Wells (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 25, 2015. The claimant participated personally. The employer participated by Thomas Beyer, General Manager, and Eric Harper, Assistant Manager. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 23, 2014, as a part-time crew member. The claimant signed for receipt of the employer's handbook. The employer issued the claimant a written warning for using inappropriate language at work in front of customers. On or about October 31, 2014, the employer issued the claimant a written warning for failure to appear for work without notice. The claimant did not notify the employer he would be late and would try to appear. He called the employer several times and later indicated he did not think he would make it to work. The employer notified the claimant with both warnings that further infractions could result in termination from employment.

On December 31, 2014, the claimant was supposed to work until 7:00 p.m. The claimant asked if he could leave. The employer told him he could not leave until he did the dishes. The claimant washed the dishes. The assistant manager told the claimant to make fifty or sixty more pizza pans. The claimant followed the instructions. The claimant asked if there was anything else that was needed. There were no other comments. He hung up his apron, put on his coat, and clocked out at 7:09 p.m.

After he was gone and away from work, he realized he had forgotten his hat and gloves. He returned to work to retrieve them. The store manager saw him and told him he could not leave.

The claimant told her he had already punched out and had returned for some items. The store manager told the claimant he had to stay or he would be terminated. The claimant told the store manager he would be happy to return if she called him in later but he needed to go home first because he had a hot date. On January 1, 2015, the claimant returned to work and the store manager would not let him work.

The claimant filed for unemployment insurance benefits with an effective date of July 5, 2015. The employer participated personally at the fact-finding interview on July 23, 2015, by Thomas Beyer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance

benefits. Such misconduct must be “substantial.” Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). On December 31, 2015, the employer allowed the claimant to punch out and leave work and then decided he could not leave work. The claimant left at the end of his shift with the understanding he had performed all the work the employer wanted him to perform. Then the employer changed its mind. The claimant’s inability to know when the employer is going to add additional duties is not misconduct. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative’s July 24, 2015, decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css