

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID R ARENDS**  
Claimant

**APPEAL NO. 11A-UI-01974-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**"BLAZIN WINGS INC**  
Employer

**OC: 12/05/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated February 16, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on March 17, 2011. The claimant participated personally. Although duly notified, the employer did not participate.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: David Arends was most recently employed by the captioned employer from July 2010 until November 29, 2010 when he was discharged from employment. Mr. Arends held the position of full-time manager and was paid by salary. His immediate supervisor was Paul Wilson, General Manager.

Mr. Arends was discharged based upon the complaint of a female server who alleged that Mr. Arends had treated her unfairly. During the incident in question the female server had been unresponsive to reasonable and work-related directives given by Mr. Arends and the claimant apparently angered the server by requiring her to perform the duties that were part of her job. Mr. Arends at the time was not feeling well and had requested time off work due to a serious heart condition. The claimant's request had been denied by the employer. Although Mr. Arends had denied any wrongdoing he was nonetheless discharged from employment.

**REASONING AND CONCLUSIONS OF LAW:**

The employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious

enough to warrant the denial of unemployment insurance 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. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Iowa Code § 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.

In this case the evidence in the record establishes the claimant was discharged based upon the unsubstantiated allegations of a female employee who was dissatisfied because Mr. Arends had required that she perform the duties of her job. Mr. Arends participated personally and provided firsthand sworn testimony denying the allegations of mistreating the employee. Inasmuch as the evidence in the record does not establish disqualifying misconduct, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated February 16, 2011, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs