

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CRYSTAL HUISMAN**

Claimant

**APPEAL NO: 11A-UI-02650-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FRITSCH FAMILY PARTNERS LLC**

Employer

**OC: 12/12/10**

**Claimant: Respondent (2/R)**

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

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Fritsch Family Partners, LLC (employer), doing business as Clarion Hotel & Convention Center appealed an unemployment insurance decision dated February 22, 2011, reference 01, which held that Crystal Huisman (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 29, 2011. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Samantha Simpson, Reception/Event Manager; Tim Duffy, General Manager; Tracy Crow, Corporate Salesperson; and Dee Kerr, Controller. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**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 employed as a part-time banquet server from November 22, 2009 through October 13, 2010 when she was discharged for insubordination. While on duty, all employees must comply with the Clarion's Dress and Uniform Code. All clothing worn while working must be maintained in proper condition and, if assigned, a nametag and/or uniform must be worn at all times so as to present a professional appearance. Banquet servers are required to wear black slacks, white tuxedo tops with bow ties and black shoes.

Banquet Manager Kevin Hart and General Manager Tim Duffy were not working on October 9, 2010 and they had placed Samantha Simpson in charge of the banquet staff and Tracey Booze, the restaurant manager. The claimant arrived for work on October 9, 2010 not dressed appropriately for work; she was scheduled to work at a wedding reception. The claimant wore a cropped, polo type shirt which was thin enough so that her bra could be seen through it. She

wore black, faded pants that had some type of vertical stripes going down the legs and she wore white tennis shoes. Her pants were so tight that her underwear was visible underneath.

The claimant was questioned by Ms. Simpson as to why she was not in her work attire and she said one of her shirts was ruined and it could not be worn. The employer had given the claimant two white shirts but the claimant offered no explanation as to why she was not wearing the other white shirt. Ms. Simpson consulted with Ms. Booze and Chef Kevin Hart about the claimant's attire and all three agreed she was inappropriately dressed for the evening's event. Ms. Booze went to Mr. Hart's office to see if there was another shirt there that she could wear and she found one but the claimant refused to wear it because it was too big. Ms. Simpson told the claimant she was still out of uniform and the claimant said, "What are you doing to do about it?"

Ms. Simpson told the claimant she needed to leave and her shift would be covered by others. The claimant told her that she was not the claimant's boss and refused to leave. She then walked back to speak with other banquet employees that were working in the kitchen. Ms. Simpson followed her and again told her that she would need to clock out and leave the property. The claimant was guided to the time clock and she said, "What are you doing to do? Fire me?" Ms. Simpson said yes and told her if she had any questions she could speak with Mr. Hart on Monday morning.

The claimant subsequently challenged her termination but it became final on October 13, 2010.

The claimant filed a claim for unemployment insurance benefits effective December 12, 2010 and has received benefits after the separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 claimant was discharged for insubordination on October 9, 2010. She did not wear her uniform on October 9, 2010 and arrived at work in an inappropriate outfit; she refused to change; she challenged her acting supervisor; and then after she was fired, she refused to leave. An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995).

Although the claimant did not use profanity, she was offensive in a confrontational and disrespectful manner. The employer has met its burden. The claimant's insubordination shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated February 22, 2011, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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