

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANA W HEIDT

Claimant

APPEAL NO: 14A-UI-11652-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS BR MANAGEMENT CO INC

Employer

OC: 09/28/14

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 29, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the December 2 hearing. Suzanne Bassler represented the employer. Vicki Broussard, the human resource manager, and Dan Rodden, the room chef, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit this employment for reasons that qualify him to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in September 2011. In January 2014, the employer promoted him to work as a full-time sous chef. In this job, the claimant was responsible for the buffet and making sure everything on the buffet was put away before he left at night.

After he became the sous chef, the employer gave him some warnings. On March 14, 2014, the executive chef talked to the claimant about improperly cooling some jambalaya. As a result of not being cooled correctly, the jambalaya spoiled and had to be thrown away. On May 8, the claimant received a warning for not having good quality food on the buffet. On May 14, the claimant received a written warning for leaving shrimp out overnight. The claimant did not see the shrimp setting out before he left work. The shrimp spoiled and had to be thrown out the next day. On May 23, the claimant received a final written warning for failing to put away 40 gallons of soup and sauces. Another employee had worked in the back kitchen on the soup and sauces and did not put them away. Since the claimant did not notice the soup and sauces had been left out and it was his ultimate responsibility as the sous chef to make sure everything was properly put away, he received the final written warning. After he received the May 23 written warning,

the claimant understood he could be discharged the next time he did not get product properly put away. The employer told him to slow down, to double and triple check everything and not to be in a rush to leave work at night.

On September 26, four turkey breasts were found in an enclosed rack. The claimant had not seen them the night before and did not realize this meat had been left out. On September 28, the employer discovered a tray of steaks had been left out overnight. When the claimant was closing on Saturday night, September 27, he did notice the tray of steaks. While other employees should have put away the turkey breasts and steaks, the sous chef is ultimately responsible for making sure everything is properly put away before he leaves work.

On October 3, the employer discharged the claimant for leaving food out overnight after he had already receive a final written warning for the same problem.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The claimant's work performance was unsatisfactory when he failed to make sure all products were properly put away before he left work. The claimant's failure to make sure food was properly put away on May 23, September 25 and 27 amounts to inadvertent negligence. The claimant may have been negligent or careless if he tried to leave work too quickly, but the facts do not establish that he was careless or negligent to the extent that he intentionally and substantially disregarded the employer's interests or his duty to the employer. The facts do not establish that the claimant committed work-connected misconduct. As of September 28, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's October 29, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of September 28, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs