

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLENE E WETHERELL**  
Claimant

**APPEAL NO. 08A-UI-06964-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LEISURE HOTEL CORP**  
Employer

**OC: 06/22/08 R: 01**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Leisure Hotel Corp. (employer) appealed a representative's July 21, 2008 decision (reference 01) that concluded Charlene E. Wetherell (claimant) was qualified to receive benefits and the employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 13, 2008. The claimant participated in the hearing. Jason Havey, the general manager, appeared on the employer's behalf. 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:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 17, 2007. The employer hired her to work as a full-time bartender. After the claimant started working, the employer asked the claimant to also work as a server.

Prior to early September 2007, the claimant's job was not in jeopardy. In early September the claimant worked a double shift. During the double shift, a customer became upset because the claimant did not allow the customer to sample the wine she brought for the table and then the customer had to wait for the bill. A representative from the Kansas City office "comped" the customer's bill after the customer complained about the claimant's service.

On September 5, 2007, the employer told the claimant to leave because of the complaint a customer made about her a day or two before. The claimant did not return to work after September 5, 2007. The claimant understood the employer discharged her on September 5, 2007.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for

reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The employer's business records indicate the claimant did not call or report to work after September 5, 2007. However, Havey did not start working until December 2007 and had to rely on the employer's records created by someone else. Since the claimant's testimony is credible, the employer's reliance on hearsay information cannot be given as much weight as the claimant's testimony. Therefore, the claimant's version of the September events is deemed credible and is reflected in the findings of fact. Based on a preponderance of credible evidence, the claimant did not quit her employment by abandoning it. Instead, the employer discharged the claimant on September 5, 2007.

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 evidence establishes the employer discharged the claimant after a customer complained about the service the claimant provided in early September 2007. Prior to early September, the claimant's job was not in jeopardy. The facts do not establish that the claimant intentionally failed to perform her job as a server satisfactorily. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 22, 2008, the claimant is qualified to receive benefits.

#### **DECISION:**

The representative's July 21, 2008 decision (reference 01) is affirmed. The claimant did not quit her employment. Instead, the employer discharged her for reasons that do not constitute work-connected misconduct. As of June 22, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw