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

BREE J HART-SHULTZ
Claimant

G M R I INC
Employer

APPEAL NO. 10A-UI-03850-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated March 9, 2010, reference 01, which denied unemployment insurance benefits based upon her separation from G M R I, Inc. After due notice, a telephone hearing was held on April 27, 2010. The claimant participated personally. Although duly notified, the employer did not respond to the hearing notice and 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 the evidence in the record, the administrative law judge finds: Bree Hart-Shultz was employed as a part-time server for the captioned company dba Olive Garden from January 23, 2006 until September 20, 2009 when she was discharged from employment.

The claimant was discharged when she inadvertently placed salad and bread on a patron's table without first entering the order into the company's computerized system. The claimant was aware of the company rule and had been warned in the past but neglected to follow the rule due to short staffing and busy work conditions. Ms. Hart-Shultz had intended to immediately enter the order and had placed the bread and salad on the patron's table as she passed by to expedite service to the customers. Claimant's error was noted before she could enter the order into the computer system and a decision was made to terminate Ms. Hart-Shultz from her employment.

The claimant believes that she was discharged for retaliation by a manager who did not like the claimant for personal reasons.

REASONING AND CONCLUSIONS OF LAW:

The employer has the burden of proof in this matter. See Iowa Code section 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 allegations, conduct 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 would expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this matter the claimant participated personally and provided sworn testimony indicating that she had inadvertently dropped salads and bread off at a table while passing by in order to expedite service to the patrons. The claimant had intended to immediately enter the order in the company's computerized system but was discharged from employment. Claimant's conduct was not for the intention of providing free food to the patrons but only based upon the claimant's desire to expedite a busy lunch hour when the employer was understaffed.

There being no evidence to the contrary, the administrative law judge concludes that the claimant's conduct was not sufficient to warrant the denial of unemployment insurance benefits.

DECISION:

The representative's decision dated March 9, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs