

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**ERAN B SALZMANN  
2538 FULTON AVE  
DAVENPORT IA 52803**

**JOSEPH'S STEAKHOUSE  
212 S CLINTON ST  
IOWA CITY IA 52240**

**Appeal Number: 06A-UI-01438-S2T  
OC: 01/01/06 R: 04  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Eran Salzmann (claimant) appealed a representative's January 25, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Joseph's Steakhouse (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 22, 2006. The claimant participated personally. The employer participated by Jim Mondanaro, President, and Mary Luedtke, General Manager.

#### 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 hired on July 26, 2005, as a full-time executive chef. The claimant was a talented chef but had trouble following the rules. He did not have a drivers' license because of a criminal conviction.

Without permission the claimant had another employee go with him to Chicago in the employer's van. The other employee drove the van back to Iowa City, Iowa, while the claimant flew to Arizona. Prior to leaving the claimant took a \$400.00 pay advance without asking permission from the employer. On or about October 19, 2005, the employer issued the claimant a verbal warning. The claimant understood he was not supposed to take advances or the employer's van without permission. In early November 2005, the claimant took a \$345.00 pay advance without permission from the employer. The employer issued the claimant another verbal warning.

The claimant worked in Iowa City, Iowa, but lived in Davenport, Iowa. It took the claimant approximately 60 minutes to drive to work. On December 30, 2005, the claimant was supposed to be at work by 1:00 p.m. At 12:35 p.m. the claimant telephoned the employer and said he wanted to spend the day at home with his daughter. The employer allowed the claimant to stay home so long as he worked New Year's Eve. The employer had 175 reservations for December 31, 2005, and needed the claimant to be at work. The claimant agreed.

On December 31, 2005, the claimant appeared for work and then left. He was not there after approximately 4:50 p.m. The employer came in at 5:00 p.m. and tried to find the claimant. The claimant did not answer his cellular telephone. The employer learned that the claimant left work with another employee and was headed toward Davenport, Iowa. The employer called the other employee and the claimant was in the vehicle. The employer asked the claimant what he was doing. The claimant said it would be alright because there were enough workers to handle the reservations. On January 2, 2006, the employer terminated the claimant for repeated failure to follow instructions.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was.

Iowa Code Section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by repeatedly failing to follow the rules. The claimant's disregard of the employer's interests is misconduct. As such he is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's January 25, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

bas/s