

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNETTE S BOLLERS

Claimant

APPEAL NO. 07A-UI-05580-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST STEAKHOUSE

Employer

**OC: 11/12/06 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Lynette Bollers filed an appeal from a representative's decision dated May 22, 2007, reference 04, which denied benefits based upon her separation from Midwest Steakhouse. After due notice was issued, a hearing was held by telephone on June 20, 2007. Lynette Bollers participated personally. The employer, although duly notified, did not participate.

ISSUE:

At issue in this matter is whether the claimant voluntarily left her employment or was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

Having heard the testimony and considered all of the evidence in the record, the administrative law judge finds: The claimant worked for this employer from December 2006 until May 2, 2007 when she was laid off due to lack of work. Ms. Bollers held the position as server/bartender on a full-time basis and was paid by the hour. The claimant's supervisor was Stan Ofanso.

Ms. Bollers was separated due to lack of work on May 2, 2007 when the facility was shut down for ten days by the local health department due to a leaking roof. The claimant was told at that time by her employer to recontact the company for assignment after ten days had elapsed. After ten days elapsed the claimant recontacted the company and was told at that time that she was "not needed." The employer supplied no reason for the claimant's separation. At the time of separation the claimant had not been previously warned and was under no disciplinary actions. Ms. Bollers was willing and able to return to work but no work was available to her by the employer.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant's separation from employment took place under nondisqualifying conditions. The claimant was separated due to lack of work when the employer's facility was shut down due to a leaking roof by the local health department on or

about May 2, 2007. Ms. Bollers remained able and available to return to work, but was specifically told by her employer that she was "not needed." Because the claimant did not voluntarily choose to relinquish her position with the employer and no misconduct in connection with the work has been established, it is the opinion of the administrative law judge that the claimant's separation took place under nondisqualifying conditions.

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.

For the reasons stated herein the administrative law judge finds that the claimant was separated for reasons that are nondisqualifying. Benefits are allowed, if otherwise eligible.

DECISION:

The representative's decision dated May 22, 2007, reference 04, is reversed. The claimant was separated under nondisqualifying conditions and is eligible to receive unemployment insurance benefits, provided that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css