

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGEL M BALL

Claimant

APPEAL NO. 16A-UI-06510-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NOODLES & COMPANY

Employer

OC: 05/15/16

Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Noodles & Company (employer) appealed a representative's June 2, 2016, decision (reference 01) that concluded Angel Ball (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 28, 2016. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Frankie Patterson, Hearings Representative and participated by Laura Anderson, General Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 October 18, 2015, as a part-time team member. The claimant signed for receipt of the employer's handbook. The employer talked to the claimant on April 1, 2016, about a \$36.00 cash drawer shortage and cash receipt irregularities. The employer did not notify the claimant that further infractions could result in termination from employment.

On April 14, 2016, the claimant's roommate's girlfriend's mother appeared at the workplace and started yelling at the claimant. The claimant walked her outside so she would not disrupt the customers. The manager went outside and asked them to move away from the property because guests were complaining. The employer did not call law enforcement. The woman left and the claimant returned to work. On April 18, 2016, the employer told the claimant she was terminated for the incident. The employer felt there was violence at the business. The employer has a policy that if an employee is a victim of a threat that leads to violence at the business, the employee has to be terminated.

The claimant filed for unemployment insurance benefits with an effective date of May 15, 2016. The employer did not meaningfully participate in the fact-finding interview on June 1, 2016. The employer provided documents in lieu of personal participation in the fact-finding interview. In the documentation the employer identified the reason for termination as attendance issues.

The employer did not identify the dates, particular circumstances, and final incident that caused the separation. The employer did not include the circumstances of all incidents the employer contended met the definition of unexcused absences. An employee with firsthand information could not be contacted for rebuttal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance

benefits. Such misconduct must be “substantial.” Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer admits that there was an incident of violence that occurred on April 14, 2016, and the claimant was the victim. It did not protect the claimant by calling law enforcement. It terminated the claimant. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative’s June 2, 2016, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs