

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELAINE E GRIFFIN**

Claimant

**APPEAL NO: 08A-UI-06915-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GODFATHER'S PIZZA INC**

Employer

**OC: 06/22/08 R: 12  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Godfather's Pizza, Inc. (employer) appealed a representative's July 21, 2008 decision (reference 01) that concluded Elaine E. Griffin (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 12, 2008. The claimant participated in the hearing. Dawn Seibel 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:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 27, 2007. She worked full time as manager of the employer's Clinton, Iowa restaurant. Her last day of work was June 25, 2008. The employer discharged her on that date. The reason asserted for the discharge was insubordination and unprofessional behavior.

There had been some employees in the restaurant who had made complaints to the employer about perceived mistreatment by the claimant, including a shift supervisor who had a high absenteeism rate. On June 24 the shift supervisor called in another absence and the claimant discussed the coverage of the shifts with an hourly shift manager, commenting that while she wanted to discharge the shift supervisor, the employer would not do so due to the pending complaint and the concern a discharge would be perceived to be for retaliation. The shift manager felt uncomfortable learning that the shift supervisor had filed a complaint against the claimant, and mentioned this to Ms. Seibel, the district manager. The employer deemed this to be an unprofessional discussion of confidential information by the claimant with a subordinate. In conversation also that day between the claimant and Ms. Seibel, the claimant again expressed her frustration as to not being able to discharge the shift supervisor, becoming loud and agitated, saying that she herself could not or would not cover all of his shifts and work open to close everyday.

There had been no clear prior discipline against the claimant, although several months earlier there had been some counseling regarding the claimant's handling of another employee who was pregnant and had work restrictions the claimant had difficulty in accommodating; she had been advised at that time that she needed to be more professional.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the claimant's comments to the other shift manager. Under the circumstances of this case, the claimant's comments to the shift manager and her expression of frustration to Ms. Seibel was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's July 21, 2008 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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