

**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**

**LAVERNA KARR  
1976 SHIRAS  
DUBUQUE IA 52001**

**DUBUQUE RACING ASSOCIATION LTD  
PO BOX 3190  
DUBUQUE IA 52001**

**Appeal Number: 04A-UI-02871-ET  
OC 02-08-04 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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 8, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 5, 2004. The claimant participated in the hearing. Tammy Schnee, Human Resources Generalist, and John Torres, Food and Beverage Director, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time concessions/deli cook/cashier for Dubuque Racing Association from March 7, 2002 to February 7, 2004. She was discharged for repeated

insubordination and failure to follow the supervisor's directions. On October 31, 2002, the claimant received a verbal warning for failure to wear gloves. On June 19, 2003, she received a verbal warning for not paying for food and telling the supervisor to "go ahead and write me up." On August 2, 2003, she received a verbal warning after arguing with a co-worker about tips. On October 10, 2003, she received a written warning for leaving her assigned workstation to use the restroom on September 19, 2003, without notifying her supervisor and also a final written warning for telling her supervisor it was not her job to fill the ice machine when asked to do so on September 19, 2003. The warning stated that any further incidents would result in termination. On February 5, 2004, a supervisor told the claimant to stock French fries and she originally refused and said the day shift did not do it so she was not going to do it either but did eventually get the fries. The supervisor also told the claimant to bring a case of Philly cheese steak from the freezer but the claimant refused because she did not believe another case was needed. She was discharged for repeated insubordination and failure to follow supervisor's directions.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was written up for insubordination four times prior to the incidents that resulted in the termination and knew, or should have known, that her job was in jeopardy because of her refusal to follow directions. While the claimant may not have agreed with the employer's policies or her supervisor's instructions, she had a responsibility to do what the employer asked unless it was unlawful or detrimental to her in some way. The claimant's actions in February 5, 2004, were not an isolated incident and her conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The March 8, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/pjs