

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA J BAILEY
Claimant

APPEAL NO. 07A-UI-10943-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOWERY'S BAR & GRILL LLC
Employer

**OC: 04/22/07 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 19, 2007, reference 08, that concluded she voluntarily quit employment without good cause. A telephone hearing was held on December 11, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time as a dishwasher for City Limits Restaurant from October 2006 to March 20, 2007. Effective March 20, 2007, the business was purchased by the employer. The claimant worked for the employer as a part-time dishwasher until April 13, 2007.

On April 13, 2007, the claimant injured her back lifting a rack of coffee cups. Immediately afterward, she began experiencing muscle spasms in her back. She informed the owner of the business, Mike Mowery, that her back was hurting and she needed to leave because she could no longer work. Mowery told her if she could not do the job and left work, that she should not come back. The claimant understood that Mowery had discharged her. Neither party had any further contact.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. The evidence establishes the claimant was discharged by the employer because she was unable to work.

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.

No willful and substantial misconduct has been proven in this case. The claimant is qualified to receive unemployment insurance benefits based on this separation from work.

DECISION:

The unemployment insurance decision dated November 19, 2007, reference 08, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css