

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD P WOLFF
Claimant

APPEAL NO. 15A-UI-00480-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

G M R I INC
Employer

OC: 12/14/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

G M R I (employer) appealed a representative's January 8, 2015 (reference 01) decision that concluded Richard Wolff (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 February 5, 2015. The claimant participated personally. The employer participated by Petra Hayslett, General Manager, and Marco Holter, General Manager. The employer offered and Exhibit One was received into evidence. 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 April 8, 2002 as a full-time preparation specialist. The claimant signed for receipt of the employer's handbook on November 8, 2003. The employer issued the claimant on December 7, 2013 for rotation issues with desserts. The claimant properly rotated the items but another employee moved them. On January 9, 2014 the employer issued the claimant a written warning for burning soup. The employer notified the claimant that further infractions could result in termination from employment. The employer issued one warning in 2004; another in 2005; and another in 2010; for performance issues.

On December 9, 2014 a general manager talked to the claimant about crab stuffing and lobster stuffing that had a December 9, 2014 label. The date on the label meant that the flood had to be put into preparation by that date. The general manager told the claimant to use the two stuffings in different preparations. He indicated it would give the stuffings one more day. The claimant understood the general manager to tell him to give the stuffings one more day. The claimant followed the general manager's instructions. He removed the labels and affixed new labels indicating December 10, 2014. The employer questioned the claimant about his actions and he admitted to changing the labels after being instructed to do so by his general manager. The employer terminated the claimant on December 11, 2014.

The claimant filed for unemployment insurance benefits with an effective date of December 14, 2014. The employer chose to participate by documents at the fact finding interview on January 7, 2015; even after the fact finder contacted the employer's rebuttal witness for information.

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).

In the appeal hearing the claimant and the general manager both testified that the general manager told the claimant to give the stuffing "one more day". The general manager understood his words to mean that the stuffing was given an extra day through food preparation. The claimant understood the general manager to tell him to give the stuffing an extra day and he thought he was supposed to make a new label. This is clearly mistaken communication on the part of the general manager. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 8, 2015 (reference 01) decision is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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