

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA G THOMPSON
Claimant

APPEAL NO: 10A-UI-04674-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES LLC
Employer

OC: 02/26/10
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's March 23, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on May 5, 2010. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in late June 2007. She worked as a full-time bartender and server.

On February 25, 2010, the bar was short-staffed and the claimant was very busy. The claimant understood the employer required bartenders and servers to ask for identification to make sure the employer did not serve minors alcohol.

On February 25, the claimant served a father and his son drinks. The son had a beer and the father had a whiskey. Normally, the claimant would ask the son for identification, but she was busy and forgot to do this. After they had their drinks, they left and tried to get into the casino. The son was not allowed in the casino because he was not 21 years or older.

When the father and son were not allowed on the casino floor, DCI investigators or security personnel talked to them when they returned to the bar. The claimant then realized she made a mistake. She told security she had overlooked asking for the son's identification.

Although the claimant's job was not in jeopardy before February 25, 2010, on February 26, 2010, the employer discharged her for the serving alcohol to a minor the night before.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant for violating the employer's policy on February 25, 2010. The facts presented during the hearing do not establish that the claimant intentionally violated the policy. She made a mistake when she was very busy. The claimant was negligent in failing to request the son's identification, but this incident does not rise to the level of work-connected misconduct. As of February 28, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's March 23, 2010 decision (reference 01) is reversed. The employer discharged the claimant, but the evidence does not establish that she committed work-connected misconduct. As of February 28, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css