

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NOLAN R HEINS
Claimant

APPEAL NO. 10A-UI-02777-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLAZIN WINGS INC
Employer

**Original Claim: 01/17/10
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Blazin Wings, filed an appeal from a decision dated February 9, 2010, reference 01. The decision allowed benefits to the claimant, Nolan Heins. After due notice was issued, a hearing was held by telephone conference call on April 5, 2010. The claimant provided a telephone number to the Appeals Section. That number was dialed at 9:59 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 10:09 a.m., the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer participated by Assistant General Manager Chad Miller and was represented by ADP in the person of Steve Solovic.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Nolan Heins was employed by Blazin Wings from July 28, 2009 until January 12, 2010 as a part-time bartender. He received a copy of the employee handbook at the time of hire and it contained the employer's policy to request identification from any person who appears to be under the age of 40, if that person orders alcohol.

On January 9, 2010, Assistant General Manager Chad Miller gave the claimant a first and final warning for failing to request identification from a customer who appeared to be under 40 years of age before serving that person alcohol. Mr. Heins was notified in that warning he would be fired if there were any further incidents. The employer takes the policy very seriously, as it is essential it avoid serving alcohol to minors, because to do so would expose it to legal and criminal liabilities.

On January 12, 2010, Mr. Miller observed Mr. Heins serving alcohol to a large, mixed-age group. He did not request identification from anyone in the group, even though at least one person appeared to be in their mid-20's. When confronted with this lapse, the claimant admitted he had "forgotten" to ask for identification. He did not maintain he thought everyone looked to be more than 40 years old. He was discharged immediately.

Nolan Heins has received unemployment benefits since filing a claim with an effective date of January 17, 2010.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant had been advised his job was in jeopardy as a result of his failure to ask for identification before serving alcohol to customer who appeared younger than 40 years of age. He knew the policy, but three days later he again failed to ask for identification before serving alcohol. This was done through negligence and not because he thought the customer looked older than 40 years of age. He demonstrated negligence and inattention to company rules and policies to such a degree as to constitute willful misconduct. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. He is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of February 9, 2010, reference 01, is reversed. Nolan Heins is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw