

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY A WOODSIDE
Claimant

APPEAL NO. 10A-UI-13012-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

205 CORPORATION
Employer

OC: 08/15/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jeffrey A. Woodside filed a timely appeal from an unemployment insurance decision dated September 8, 2010, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, on October 28, 2010, with Mr. Woodside participating. Manager Tony DeFazio participated for the employer, 205 Corporation. Exhibits One through Eleven were admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jeffrey A. Woodside was employed as a food server by 205 Corporation from April of 2009 until he was discharged on August 14, 2010. The final incident leading to the discharge occurred on Sunday, August 8, 2010. Mr. Woodside had worked the previous evening and had accepted a credit card payment for one order. On August 8, 2010, it was discovered that somehow the credit card charge had been doubled. Manager Jeris Schesser was attempting to resolve the situation. Without authorization, Mr. Woodside took it upon himself to “unsettle” the payment. This had the potential of preventing the employer from being paid even the correct amount of the bill. Mr. Schesser sent Mr. Woodside home at that point. Mr. Woodside was not scheduled to work again until August 14, 2010. When he arrived on the August 14, he was told that he no longer had a job.

Mr. Woodside had received ten prior warnings between August of 2009 and March of 2010.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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 employer has the burden of proof. See Iowa Code section 96.6-2. The administrative law judge views the final incident as misconduct. Even if Mr. Schesser had not specifically told Mr. Woodside not to unsettle the charge, Mr. Woodside was aware that there was a problem and that Mr. Schesser was trying to resolve the issue. In itself, the incident might be viewed as an isolated incident of poor judgment. However, viewed in the context of ten prior warnings in less than a year, the administrative law judge concludes that the evidence as a whole is sufficient to establish disqualifying misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated September 8, 2010, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw