

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MANETTE R ANDERSON
Claimant

APPEAL NO. 11A-UI-15384-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PANTHER PRIDE
Employer

**OC: 10/30/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated November 29, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 22, 2011. Claimant participated. Peggy Grendler was a witness for the claimant. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Manette Anderson and the testimony of Peggy Grendler.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a restaurant located in Cedar Rapids, Iowa. The claimant was hired as a waitress on March 7, 2011. She initially was a full time employee but the employer cut back her hours to part time. Her last day of work was October 21, 2011.

On October 21, 2011, the claimant was finishing her shift. She went over to a table where one of the managers, Brian, was sitting with a customer – Peggy Grendler. The claimant had recently gotten back together with her boyfriend and Brian told the claimant that she was a disgrace and a whore. She contaminated the earth where he walked and she was a piece of shit. He then said that someone should take a gun and shoot the claimant in the head. The claimant started crying and Ms. Grendler took her home.

The claimant's shifts were covered for the next week and the claimant called her manager, Leah McDowell, about her schedule for the following week. The claimant left messages, which Ms. McDowell never returned. On October 31, 2011, the claimant was told by another employee and a customer that she had been fired.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

There is no evidence whatsoever in this record that the claimant was discharged for disqualifying misconduct. The employer did not participate in the hearing and there is no evidence on why the claimant was terminated. The claimant testified that one of the managers spoke to her in a horrible way and that she was extremely upset. The claimant's testimony was corroborated by a customer who heard the whole exchange. The employer never contacted the claimant and told her that she was terminated. The claimant only found this out from another employee and customer. Since there was no discharge for misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated November 29, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs