

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MORGAN STILLE
Claimant

SNS BBQ CO LLC
Employer

APPEAL 16A-UI-07354-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/09/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 30, 2016, (reference 08) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 22, 2016. Claimant participated. Sandy Reuter attended the hearing on behalf of claimant. Employer participated through owner Elizabeth Singer. Employer exhibit one was admitted into the record with no objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a cook from January 27, 2016, and was separated from employment on June 13, 2016, when she was discharged.

The employer has a written employee meal policy that prohibits employees from eating or taking food unless it is paid by the employee. Employer Exhibit One. Claimant was aware of the policy. Employer Exhibit One.

During the week of June 6, 2016, claimant would make extra food for orders so she could eat the extras at work. Claimant did not pay for the food. Claimant did not have permission from the employer to make extra food to eat. The employer had conversations with claimant about taking food and not paying for it, which occurred during the week of June 6, 2016. Over the weekend (June 11 and 12, 2016), claimant spoke with the co-owner and they decided to discharge claimant on June 13, 2016.

On May 25, 2016, the employer placed claimant on an indefinite probation. Employer Exhibit One. Claimant was placed on probation for not following instructions, not performing her job duties, not paying her tab in timely manner, and for being on her cellphone. Employer Exhibit One. Claimant was warned that her job was in jeopardy upon any further incident. Employer Exhibit One.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has a policy that prohibits employees from eating food without paying for it. Employer Exhibit One. The employer has presented substantial and credible evidence that claimant purposefully made more food for orders and then ate the extra food while she was working without paying for the food during the week of June 6, 2016. Claimant did not have permission from the employer to make more food than what was ordered and then eat the extra food. The employer has a duty to protect its property.

Claimant purposefully making extra food and then eating the extra food was contrary to the best interests of the employer. Claimant's actions are disqualifying job misconduct. Furthermore, the employer warned claimant her job was in jeopardy on May 25, 2016. Benefits are denied.

DECISION:

The June 30, 2016, (reference 08) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs