

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN L HOUK
Claimant

APPEAL NO. 14A-UI-01414-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PUMP N PIZZA INC
Employer

OC: 01/05/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Robin Houk (claimant) appealed a representative's January 30, 2014, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Pump N Pizza (employer) for insubordination in connection with her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 27, 2014. The claimant participated personally. The employer participated by Brooke Lilley, Human Resource Director/Store Supervisor.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 29, 2012, as a full-time sales associate. The claimant signed for receipt of the employer's handbook on September 14, 2013. The employer did not issue the claimant any warnings during her employment.

On January 6, 2014, during their break the claimant and a co-worker went outside with a cup of water. The co-worker threw the water in the air and the claimant recorded the water freezing with her cell phone. The claimant posted the video on line. The store manager saw the video on January 7, 2014, and thought the video was inappropriate.

The store manager sent the claimant a text to her cell phone and something like, "Did you take the video". The claimant and her husband had traded cell phones for the day because the claimant's cell phone was not working properly. The claimant's husband fixed the problem and received the text. He responded to the text stating something like, "I didn't take the video". The employer assumed the claimant had answered the text. The claimant was unaware of the text exchange.

On January 8, 2014, the employer questioned the claimant when she came to work about whether she took the video. The claimant asked why it mattered. The claimant thought it did

not matter because she was on break when she took the video. The employer asked the question again and the claimant said she took the video. The employer terminated the claimant for insubordination or not telling the truth on January 7, 2014. After her termination, the claimant's husband told her about the text he sent.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 30, 2014, decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs