

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

BRENDA L ROSE  
6610 COLBY AVE  
WINDSOR HEIGHTS IA 5031

PARISIAN VIRGINIA LLC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-11631-HT  
OC: 10/03/04 R: 02  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer, Parisian, filed an appeal from a decision dated October 18, 2004, reference 01. The decision allowed benefits to the claimant, Brenda Rose. After due notice was issued a hearing was held by telephone conference call on November 22, 2004. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Director of Human Resources Karla Severson. Exhibits One and Two were admitted into the record.

#### 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: Brenda Rose was employed by Parisian from April 1985 until September 30, 2004. She was the full-time store manager in Southridge Mall in Des Moines, Iowa. She had received a copy of the employee handbook during the course of her employment.

On August 25, 2004, the store was having a special promotional event for customers. Included in the entertainment was a beer tasting. After the customers had left and the associates were closing up, the claimant invited another sales manager to her office to have a beer. She was seen consuming the beer by an associate and it was reported to the loss prevention department on August 30, 2004. A loss prevention associate investigated the matter and after determining the incident was substantiated, notified human resources and the region vice president on September 23, 2004.

The claimant was absent due to illness for a few days and it was not until September 30, 2004, that Human Resources Director Karla Severson and Regional Vice President of Store Gary Key, were able to talk to the claimant. She admitted to taking a swallow of beer but no more than that because it was "flat and stale." Ms. Rose was aware of the company policy which prohibits the possession or consumption of alcohol or controlled substances on the premises and during work hours. She had already received a written disciplinary action for performance improvement in May 2004, and was discharged by Ms. Severson and Mr. Keys at the September 30, 2004, meeting.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant received a copy of the employee handbook which set out the policy regarding the consumption of alcohol. She did admit to taking one swallow of beer after the customers had left the special promotional event. While this is, strictly speaking, a violation of the company rule, it was apparently a one-time error in judgment after being employed for almost 20 years. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). The administrative law judge cannot conclude that this one incident during such a lengthy tenure, rises to the level of conduct so egregious as to warrant a denial of unemployment benefits.

The employer indicated it did take into account a disciplinary action given to the claimant a few months before in which she was notified that her performance needed improvement. However, the judge does not find enough connection between that notice and the incident in August 2004, to find that it was part of a progressive disciplinary action. Benefits are allowed.

DECISION:

The representative's decision of October 18, 2004, reference 01, is affirmed. Brenda Rose is qualified for benefits provided she is otherwise eligible.

bgh/kjf