

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY STEWART
Claimant

APPEAL NO. 06A-UI-11837-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BACK HOME BAKERY & COFFEE SHOP
Employer

OC: 11-05-06 R: 04
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 5, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 28, 2006. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number when called for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time upstairs manager for Back Home Bakery & Coffee Shop from September 2006 to October 30, 2006. On October 27, 2006, the claimant called in sick and Mr. Roney stated he thought the claimant was going to voluntarily quit his job and the claimant stated he was not planning to quit. Later that day the claimant walked to Wal-Mart to get medication. On October 30, 2006, he arrived for work at 5:15 a.m. and was told by Owner Darrell Roney that he did not believe it was “a good idea for (the claimant) to work here anymore.” When the claimant asked why Mr. Roney cited several reasons including that he did not believe the claimant was upfront and honest with him because he thought the claimant changed some of the recipes and gave away food. The claimant denies that he changed any of the recipes but agrees that he gave customers who had to wait at least ten minutes a pastry and paid for it out of his own pocket as that was what he understood the employer’s policy to be. The claimant had complained to Mr. Roney that his check was short and Mr. Roney indicated that was his daughter’s department but gave the claimant \$80.00 to help make up for the shortage. Mr. Roney also told the claimant he thought he saw him out walking around October 27, 2006. Mr. Roney asked for the claimant’s recipe book and the files he maintained on each employee and considering all of the circumstances the claimant believed his employment was terminated. He returned later that day and asked Mr. Roney for a “pink slip” but Mr. Roney stated the claimant voluntarily quit and refused to give him one.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the employer refused to give the claimant a pink slip saying he was discharged from employment and stated he voluntarily quit his job, the claimant adamantly denies that he quit and maintains Mr. Roney terminated his employment. The claimant's testimony does not indicate any actions that would be considered a voluntarily quit and because the employer did not participate in the hearing, the

separation must be considered a termination of employment. Consequently, the employer has the burden of proving disqualifying job misconduct. When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. The employer failed to meet its burden. Work-connected misconduct has not been established in this case. Therefore, benefits must be allowed.

DECISION:

The December 5, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css