

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWNDRA D HAWKINS
Claimant

APPEAL NO: 12A-UI-15185-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

205 CORPORATION
Employer

**OC: 11/18/12
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 19, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Tony Defazio, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer as a manager in August 2010. The employer noticed there was food and labor costs issues at the restaurant the claimant managed.

On November 17, assistant managers reported confrontations between employees on November 10 and 16. On November 10, an employee, M., told an assistant manager, M.J., that he did not like the way M.J. ran the shift. After the claimant observed that both M. and M.J. were upset, she pulled M. aside and talked to him in her car about the way he talked to and treated M.J. The claimant took M. to her car because she did not feel there was a private area where she could talk to M. Employees saw the claimant talking to M. in her car. Even though they did not know what the claimant said, they concluded she had not reprimanded or disciplined M. for his conduct toward an assistant manager.

On November 16, the claimant was in the kitchen cooking. A female employee, A., became upset when M. told her how to do something when she wanted someone to do this for her. A. started shouting at M. Instead of backing away from the situation, M. made comments to A. The two of them were yelling, swearing and threatening one another in the kitchen. The claimant was still busy cooking and tried to get the two of them to walk away from one another. When they kept shouting and threatening one another, the claimant asked an assistant manager to come back to the kitchen to help her. Customers heard M. and A. swearing at one

another. When the assistant manager came to the kitchen, he stopped the confrontation. When the November 16 incident was reported, it was reported that the claimant did nothing to stop the confrontation.

On November 17, Defazio talked to the claimant about how employees were running the restaurant. The claimant acknowledged there were problems. When she noticed issues, she tried to address and resolve the issues. The employer did not ask what she did or did not do about the November 10 and 16 incidents. The employer told the claimant that A. was returning to work even though A. had called the claimant a b____. Since the claimant and employer talked about how to get employees and store under control, the claimant assumed she would have time to do this. Instead, on November 20, the employer discharged the claimant. After Defazio talked to the owner, the employer decided the claimant was unable to get employees and the food and labor costs under control and discharged her.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant for business reasons. Even though the employer received information that the claimant did nothing to resolve employee confrontations or disputes that report was not true. The claimant did her best to resolve disputes. Talking to M. in her car may not been a good business decision. Neither employees nor the employer asked her what she talked to M. on November 10. Since the assistant manager that came back to the kitchen on November 16 was not present when the confrontation started, he did not know the claimant asked A. to calm down for both M. and A. to walk away from one another.

Since the claimant admitted she did not have control of her employees, the employer had to do something to get the restaurant back on track. The evidence establishes the claimant's attempts to get control of her restaurant were not successful. But the facts do not establish that the claimant committed work-connected misconduct. As of November 18, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's December 19, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of November 18, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs