

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILY DANILSON
Claimant

APPEAL NO: 13A-UI-05739-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

205 CORPORATION
Employer

OC: 04/21/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 7, 2013, 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 June 20, 2013. The claimant participated in the hearing. Tony DeFazio, General Manager and Michael Leone, Manager, participated in the hearing on behalf of the employer.

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 server for The Tavern from March 2, 2011 to April 20, 2013. The claimant was working April 20, 2013, a busy Saturday night when Manager Michael Leone came back into the servers' area. The claimant saw him out of the corner of her eye and said, "Finally, we have some help back here." The parties had their backs to each other and the claimant did not raise her voice or use profanity. Mr. Leone turned around and stated, "Emily, you can quit running your mouth or you can just go home." The claimant was shocked by his statement and turned around to face him. She did not feel she was "running her mouth" and she had no intention of leaving unless forced to do so. Mr. Leone began "flailing" his arms in the air, repeatedly telling the claimant to go home. He then stated "There's the door" and "Don't come back." The claimant was confused by the entire situation and started to walk back towards her tables before Mr. Leone demanded that she check out and give him all of her work items before again stating, "There's the door" and that the claimant should leave. At that point the claimant felt she had no choice but to leave. The parties went to Mr. Leone's office and General Manager Tony DeFazio stopped by to ask what happened. Mr. Leone told him the claimant was mouthing off and the claimant tried to tell Mr. DeFazio what happened but he walked out of the office because he "stands by (his) managers." The claimant called Mr. DeFazio Monday, April 22, 2013, to ask about the status of her job and asked if she could come in and work her scheduled shift that day but he told her she could not. The claimant

asked why and Mr. DeFazio said it was because the claimant was “mouthing off” to management.

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.

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). The claimant made a simple statement in saying, “Finally, we have some help back here,” on a busy Saturday night. While she might have phrased it better, there was not anything wrong with expressing the sentiment of it being nice that a member of management was helping the servers. She did not raise her voice or use profanity but Mr. Leone became very angry and terminated her employment by telling her to leave and not return. Mr. DeFazio would not even listen to the claimant's telling of what happened, either that night or the following Monday when she called

him to discuss the situation. The claimant did not have the requisite intention to voluntarily quit her job but only left because Mr. Leone forced her to do. Under these circumstances, the administrative law judge must conclude the claimant did not quit her job but was discharged from employment. The employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The May 7, 2013, 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