

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM LYMAN
Claimant

APPEAL NO. 14A-UI-01329-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PERKINS & MARIE CALLENDER'S
Employer

OC: 01/05/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Perkins & Marie Callender's (employer) appealed a representative's January 27, 2014, decision (reference 01) that concluded William Lyman (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 26, 2014. The claimant participated personally. The employer participated by Jerry Hilby, General Manager. The claimant offered and Exhibit A was received into evidence.

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 12, 2013, as a full-time associate manager. The claimant signed for receipt of the employer's handbook. On November 26, 2013, the employer issued the claimant a final written warning based on a guest complaint. The employer notified the claimant that further infractions could result in termination from employment. On January 5, 2014, the employer told the claimant he was terminated because of an anonymous customer complaint. The employer did not tell the claimant what the customer complained of.

The claimant filed for unemployment insurance benefits with an effective date of January 5, 2014. He received \$2,634.00 in benefits after the separation from employment. The employer participated personally at the fact-finding interview on January 23, 2014, by Jerry Hilby.

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 could not give any information about the date of the customer's visit, what the customer was complaining about, and the claimant's actions. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 27, 2014, decision (reference 01) is affirmed. 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