

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BILLIE WEDO**  
Claimant

**APPEAL NO: 10A-UI-08112-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLAZIN WINGS INC**  
Employer

**OC: 05-02-10**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 25, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 22, 2010. The claimant participated in the hearing. Paul Wilson, Training General Manager and Barb Hamilton, Employer Representative, 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 part-time heart of house cook for Buffalo Wild Wings from December 28, 2009 to April 30, 2010. The claimant was putting items away by herself as a large truck was unloaded April 30, 2010. She expected Training General Manager Paul Wilson to be there to help her but unbeknownst to her he had a late night the evening before and was not able to come in early. When he arrived at 10:30 a.m. she said, "This is bullshit" referring to the fact she had to put the truck away by herself and indicated she was leaving after the truck was put away. She said it several times but Mr. Wilson did not take her seriously. When the truck was put away the claimant went into Mr. Wilson's office and said she was leaving for the day and he said, "If you leave you don't have a job." The claimant said "okay" and decided not to leave because Mr. Wilson said she would lose her job and she did not want to leave her co-workers short-handed. She went back to her area and began working and after a short time Mr. Wilson shouted from his office, "I've got your shift covered. You need to get the hell out." The claimant said goodbye to her co-workers and left. She was not scheduled April 30 or May 1, 2010. She called Mr. Wilson prior to her shift May 2, 2010, and asked if she needed to come in and he said, "Nope. Bye," and hung up on her. The claimant determined her employment was terminated at that point. The employer considered her to have abandoned her job April 30, 2010.

## 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 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 claimant said she was going to leave for the day April 30, 2010, she did not do so after Mr. Wilson told her that if she left she would lose her job. She went back to work and was performing her job until he yelled from the office that he had her shift covered and she needed to "get the hell out." The employer maintains the claimant abandoned her job but she did not walk out; instead she was told to leave and then told she did not need to return when she called prior to her next shift May 2, 2010. Mr. Wilson testified that when the claimant said she was going to leave after the truck was put away that he did not take her seriously but later, because she had her purse with her when she came into his office after being outside, he decided to cover her shift. He did not ask her if she was still planning to leave after being told she would lose her job if she did so and she did not leave. Under these circumstances, the administrative law judge must conclude the claimant's employment was terminated and the employer has not

demonstrated that her actions rose to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The May 25, 2010, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs