

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL R GUNTHER
Claimant

APPEAL NO. 09A-UI-09166-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QDOBA OF DAVENPORT INC
QDOBA MEXICAN GRILL
Employer

Original Claim: 05/17/09
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated June 22, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 13, 2009. The claimant participated. The employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the claimant committed misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant worked as a cook/server. The claimant and another employee were accused of improper use of the office computer. The claimant was told he was discharged unless he or the other employee did not admit to the improper use of the computer. The claimant testified he did not improperly use the computer. The claimant was terminated by Dena Scarbrough, Regional Manager. The claimant called his immediate supervisor, General Manager, Mr. Taylor, who confirmed he was terminated.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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 convincing evidence in the record is that the claimant did not quit but was fired. The employer accused the claimant of improper use of the computer and terminated his employment. The employer did not offer any proof of the claimant improperly using the computer or that the claimant voluntarily quit. The claimant was told he was fired. The employer did not provide evidence of misconduct. The employer has failed to prove misconduct.

DECISION:

The representative's decision dated June 22, 2009, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/kjw