

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SYDNEY A JOHNSON
Claimant

BWW RESOURCES LLC
Employer

APPEAL 20A-UI-02375-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/09/20
Claimant: Respondent (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

BWW Resources (employer) appealed a representative's March 13, 2020, decision (reference 02) that concluded Sydney Johnson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 29, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Conor Schley, General Manager, and Andy Schmitz, District Manager.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid unemployment insurance benefits, and which party should be held responsible for the overpayment.

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 February 15, 2017, as a part-time hospitality member. The employer has an employee handbook.

On February 18, 2019, the employer issued the claimant a final written warning after three customers complained about her rudeness. The employer notified the claimant that further infractions could result in termination from employment. It also trained her to request management if she is having problems with a customer.

On February 5, 2020, a customer complained that the claimant was rude to her and unprofessional. The employer questioned the claimant and the claimant remembered the customer. The customer did not know the correct name for the item she was ordering. The

customer called the claimant a “bitch”. The claimant responded unprofessionally rather than calling for her manager. The employer terminated the claimant on February 5, 2020.

The claimant filed for unemployment insurance benefits with an effective date of February 9, 2020, and received no state or federal benefits after the separation from employment. The employer provided the name and number of Mike Passarello as the person who would participate in the fact-finding interview on March 4, 2020. The fact finder called but Mr. Passarello but was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer's witness did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not identify the dates or submit the specific rule or policy that the claimant violated which caused the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

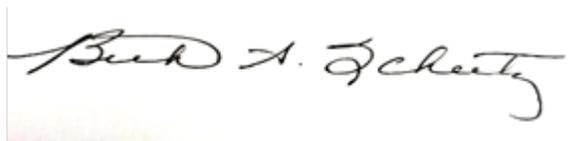
This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. She was rude and unprofessional to customers after being told to ask for management in difficult situations. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The representative's March 13, 2020, decision (reference 02) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

April 30, 2020
Decision Dated and Mailed

bas/scn