

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMAINE A SIMMONS**  
Claimant

**APPEAL NO: 10A-UI-09955-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QDOBA**  
Employer

**OC: 06/13/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's July 7, 2010 decision (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. A telephone hearing was held on August 26, 2010. The claimant participated in the hearing. Josh Mueller, the general manager, appeared on the employers' behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 6, 2009. He worked as a part-time cook. In January 2010, the employer talked to the claimant about some attendance issues. In January the claimant's vehicle was not working properly. The claimant resolved his attendance issues.

During his employment, the employer talked to the claimant about following the employer's recipes. When the claimant worked, he sometimes relied on another cook to get all the ingredients together and then he mixed them together. The claimant acknowledged that instead of measuring the amount of oil needed to make rice, he sometimes "eyeballed" the amount of oil needed. The employer talked the claimant many times about following the employer's recipes. The claimant did not remember receiving any written warnings for not following the employer's recipes.

The employer also gave the claimant warnings about failing to label food correctly, for example the time it was made or to be used by. When the claimant was discharged for failing to follow the employer's procedures, he had no understanding his job was in jeopardy. The claimant did his job to the best of his ability. The employer discharged the claimant on May 30, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Casper 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established justifiable business reasons for discharging the claimant. The employer did not know when any written or verbal warnings were given to the claimant. The employer surmised the claimant was discharged because he did not properly label some food, but the evidence does not indicate when this occurred or what the claimant did incorrectly. Based on the evidence presented during the hearing, the facts indicate the claimant made mistakes, but did not commit a current act of work-connected misconduct. Therefore, as of June 13, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's July 7, 2010 decision (reference 01) is reversed. The employer discharged the claimant for business reasons, but did not establish that the claimant committed a current act of work-connected misconduct. As of June 13, 2010, the claimant is qualified to receive benefits. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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