

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SULEJMAN GANIBEGOVIC
Claimant

APPEAL NO. 09A-UI-07218-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

RESTAURANT CONCEPTS INC
Employer

**Original Claim: 02/15/09
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 7, 2009, reference 04, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 4, 2009. The claimant participated. Although the employer did provide a telephone number, two calls by the administrative law judge produced a busy signal, and there was no way to leave a message. The employer did not call in during the hearing. The record consists of the testimony of Sulejman Ganibegovic and the testimony of Willie Pearson. Nina Radocaji served as Bosnian interpreter for the claimant.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant did cleaning for the employer, which operated an Arby's restaurant. The claimant worked there for 2½ years. He was terminated on August 15, 2008, for being five minutes late from taking a break. He had gone across the street to inquire about an application he had made to a nearby McDonald's restaurant.

REASONING AND CONCLUSIONS OF LAW:

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 to show misconduct that disqualifies an individual from receiving unemployment insurance benefits. There was no testimony from the employer on the circumstances that led to the claimant's termination. The claimant testified that he was terminated after taking a break that was five minutes too long. This does not constitute misconduct and, therefore, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated May 7, 2009, reference 04, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw