

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY M DRABEK

Claimant

APPEAL NO. 12A-UI-06798-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARY JO'S HOBO HOUSE & CATERING

Employer

OC: 04/29/12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 29, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 28, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with Linda Barker. Mary Jo Hughes participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time for the employer as a server from August 2010 to April 18, 2012. Mary Jo Hughes is the owner of the restaurant. For the last month, the claimant was only working on Wednesdays for about three hours over the noon hour.

Sometime in April 2012, the claimant noticed that a customer had left her cane at the table as she was leaving. The customer was a long-time friend of the claimant and the claimant often kidded with her. She reminded the customer: "Don't forget your pogo stick." The claimant intended the comment to be a joke and did not make the comment in an unkind way. The customer, however, later reported to Hughes what the claimant said and that she was tired of the claimant's comments. As a result the complaint, Hughes decided to discharge the claimant. Hughes had never formally disciplined the claimant but had counseled her once in the past about spending too much time talking with customers.

Hughes discharged the claimant when the claimant reported to work on April 25, 2012.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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 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).

The unemployment insurance rules provide provides: "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).

No current act of willful and substantial misconduct has been proven in this case. The claimant thought she was joking with the customer who she considered her friend and had never known the customer was upset. The claimant had not been disciplined about rude treatment of customers in the past, only that she should not spend so much time at the table talking with them.

DECISION:

The unemployment insurance decision dated April 29, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw