IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KRISTA A RENCHIN
5771 SE CIRCLE DR
AVON LAKE IA 50047

CHOPS BARBEQUE LLC
1701 SE DELAWARE AVE
ANKENY IA 50021

Appeal Number: 04A-UI-11584-DW
OC: 10/03/04 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Krista A. Renchin (claimant) appealed a representative's October 18, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Chops Barbeque LLC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on December 7, 2004. The claimant participated in the hearing with Kim Renchin, her mother, and Julie Jorgenson, a co-worker. Brett Gligour, the owner, appeared on the employer's 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 March 13, 2003. The claimant worked 20 to 35 hours a week as a cook. The claimant and the owners were the only people who could close the employer's business at night.

In November 2003, the employer gave the claimant a warning for being involved in a confrontation with another employee. The claimant understood the employer would discharge her if she again displayed a negative attitude at work.

There were several times during her employment the employer denied the claimant's request for time off. The claimant asked for some time off during the weekends and became increasingly frustrated when other employees were granted time off, but she was not. On October 1, the claimant was upset and frustrated because the employer again denied her request for time off the week of October 16. Gligour heard the claimant ask her mother, a day-shift manager and the person who scheduled employees, why the employer again denied her request for time off. The claimant expressed frustration that other employees were granted time off and she was not. Gligour knew the claimant was upset and tried to talk to her, but the claimant would not talk to him. Gligour had to go to a catering job, but called his wife, Michelle, to let her know the claimant was in a foul mood before she came to work.

After Michelle arrived at work, the restaurant became very busy. The claimant was so busy cooking she needed Michelle's assistance. When Michelle came into the kitchen, the claimant was in a hurry to get food out of the fryer and banged on the fryer when getting food out of the fryer. Michelle already knew the claimant was in a bad mood that day and told her to stop banging the fryer. Michelle then told the claimant that if she did not want to work, she could go home. The claimant was still upset about not getting time off and decided to leave work early as Michelle suggested she do. The claimant punched out and left work early.

On October 2, 2004, the claimant was scheduled to work at 10:45 a.m. The claimant's mother planned on giving the claimant a ride to work because the claimant did not have a vehicle to get to work. On October 2, the claimant's mother's vehicle was not working and she had to get a ride from another person. The claimant's mother arrived to work late and called the claimant to let her know she had just gotten to work and could not pick her up. The claimant indicated she would find a ride to work, but would be late. The employer did not talk to the claimant but understood the claimant's mother told the claimant she did not need to work that day. The claimant did not receive this message. The employer wanted to talk to the claimant about October 1 before she returned to work.

The claimant found a ride to work. After she arrived at work, the employer asked her what she was doing at work. The claimant responded by asking if she was fired and the employer told her yes because of her attitude. Later, the employer called and left a message for the claimant to meet with the employer on Sunday to talk about her continued employment. The claimant did not respond to the message and did not again report for work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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. Cosper 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).

After the employer gave her the November 2003 warning, the claimant understood the employer would discharge her if she again displayed a negative attitude at work. On October 1, the claimant was upset and frustrated that other employees' time off requests were granted, but hers were denied. Gligour was busy with a catering job on October 1 and did not have time to really talk to the claimant even though he realized she was upset. Before Gligour left for the catering job, he warned his wife that the claimant was in a bad mood. After Michelle Gligour heard the claimant banging on a fryer, she told the claimant she could home if she wanted to. The claimant went home early on October 1 after Michelle Gligour told her she could leave.

The next morning, the employer did not realize the claimant had not received the message that she did not need to report to work that day. The employer was surprised that the claimant was at work and asked what she was doing at work. While the claimant's response may not have been the most appropriate, under the circumstances of what had happened the night before, it was a reasonable response. Instead of telling the claimant before she worked again, she needed to talk to the owners, Gligour was frustrated and indicated she was discharged. After the employer had an opportunity to reflect upon the situation, the employer attempted to meet with the claimant and talk about her continued employment, but the claimant did not contact the employer again. Since the employer had already discharged her, the claimant's failure to meet with the employer or contact the employer after October 2 does not change a discharge to a voluntarily quit situation.

The evidence establishes both parties were frustrated with one another on October 1 and 2. As a result, the parties failed to communicate with one another. When the employer saw the claimant at work on October 2, the employer made a rash decision and discharged the claimant. Since the claimant left work early with the employer's permission on October 1 and did not know the employer did not want her at work on October 2, the facts do not establish that she committed any work-connected misconduct. Therefore, as of October 3, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 18, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of October 3, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/smc