

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD D RIKER
Claimant

APPEAL NO. 07A-UI-11331-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SKY VENTURES LLC
Employer

**OC: 10/21/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sky Ventures, LLC, doing business as Pizza Hut, filed a timely appeal from an unemployment insurance decision dated November 28, 2007, reference 01, that allowed benefits to Edward D. Riker. After due notice was issued, a telephone hearing was held December 27, 2007, with Mr. Riker participating. Kathy Udelhoven participated for the employer. Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Edward D. Riker was employed by Sky Ventures, LLC, doing business as Pizza Hut, from July 19, 2006, until he was discharged July 14, 2007, by General Manager Teresa Smith. Ms. Smith was unhappy with Mr. Riker's performance at close on July 12, 2007. He had received other warnings about performance in the past. On July 12, Mr. Riker and the crew under his supervision had completed the normal closing tasks but had perhaps forgotten to document that they had done so.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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. See Iowa Code section 96.6-2. Among the elements that it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8).

Ms. Udelhoven, the district manager, had no specific information as to the final incident. The claimant's testimony establishes only the possibility of an inadvertent error in failure to document the closing tasks. From the evidence in this record, the administrative law judge is unable to conclude that the claimant willfully and deliberately disregarded the employer's interests in the final incident leading to his discharge. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated November 28, 2007, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw