

**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**

**HENRY HODGES JR
3312 HEATHERTON DR #5
DAVENPORT IA 52804**

**VILLAGE INN/BAKERS SQUARE
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000**

**Appeal Number: 04A-UI-07864-CT
OC: 06/20/04 R: 04
Claimant: Respondent (1)**

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 is 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 for Misconduct

STATEMENT OF THE CASE:

Village Inn/Bakers Square filed an appeal from a representative's decision dated July 12, 2004, reference 02, which held that no disqualification would be imposed regarding Henry Hodges' separation from employment. After due notice was issued, a hearing was held by telephone on August 11, 2004. Mr. Hodges participated personally. The employer participated by Julie Perez, General Manager, and Rosalind Coles, Manager. The employer was represented by John Fiorelli of Employers Unity, Inc.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Hodges was employed by Village Inn from December 29, 2003 until June 19, 2004 as a part-time dishwasher and cook. He worked approximately 25 hours each week. On June 14, two servers complained that Mr. Hodges did not have silverware for them when they were ready to perform their end-of-shift duties before leaving for the day. When they asked him for silverware, he indicated he did not know how long it would take before the silverware would be done and then muttered something under his breath. When Rosalind Coles approached Mr. Hodges on the matter, he complained about the servers always going to her over the silverware issue. He had received a verbal warning on May 25 about not having the silverware ready. Ms. Coles intended to give him a written warning concerning the events of June 14.

On June 17, Mr. Hodges noted that he was not on the work schedule and questioned Julie Perez as to why he was not. He was told that he would be scheduled to work with either an assistant manager or the general manager. During the conversation with Ms. Perez, Mr. Hodges raised issues related to Ms. Coles. Ms. Perez suggested they meet the next day when Ms. Coles could be present to hear his complaints. Mr. Hodges suggested to Ms. Perez that she speak with other employees concerning his conduct at work. The two spoke for approximately 30 minutes inside the building. When Ms. Perez was leaving, Mr. Hodges followed her to her car to continue discussing his work concerns. Ms. Perez did not at any point advise Mr. Hodges that speaking with her at her car made her uncomfortable or that such conduct might be a factor in him being discharged.

In making the decision to discharge Mr. Hodges, the employer considered the fact that Ms. Coles no longer wanted to work with him. The employer also considered comments made by three servers to the effect that they were uncomfortable working with Mr. Hodges because he yelled and swore. Mr. Hodges was notified of his discharge on June 19.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Hodges was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons which follow, the administrative law judge concludes that the employer has failed to establish disqualifying misconduct. Although the employer alleged that Mr. Hodges argued with two servers about silverware on June 14, the testimony does not establish an argument. The servers asked about silverware and Mr. Hodges told them they would have to wait. The administrative law judge would not characterize this as an argument. His subsequent conversation with Ms. Coles did not constitute an argument either. At any rate, the employer only intended to give him a written warning as a result of the actions of June 14. It is clear that the employer did not consider the conduct of June 14 to merit a discharge from the employment.

The only matters which occurred after June 14 were Ms. Coles' statement that she would no longer work with him, the fact that he approached Ms. Perez outside at her car, and the fact that three servers indicated being uncomfortable working with him. The fact that he approached Ms. Perez at her car was not an act of misconduct. She gave him no indication that he was engaging in inappropriate conduct. The statements made by Ms. Cole and the

servers related to matters which had already occurred on or prior to June 14, conduct for which the employer deemed only a written warning was warranted.

The employer's evidence established that Mr. Hodges was a balky and argumentative employee. It did not establish that he deliberately and intentionally engaged in conduct he knew to be contrary to the employer's interests or standards. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated July 12, 2004, reference 02, is hereby affirmed. Mr. Hodges was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/b