

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATOYIA S WATSON
Claimant

APPEAL NO: 12A-UI-06673-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIZZA HUT
Employer

OC: 05/13/12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Latoyia S. Watson (claimant) appealed a representative's May 31, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Pizza Hut (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 28, 2012. The claimant participated in the hearing. Greg Price 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on August 11, 2008. As of about December 2008 she worked part time (about 26 hours per week) as a shift manager at the employer's Chariton, Iowa location. Her last day of work was May 3, 2012. The employer discharged her on that date. The reason asserted for the discharge was having a verbal fight with a coworker in the store.

On May 2 the claimant was working with one other employee doing store opening duties. At about 8:30 a.m., another employee, who was not scheduled to work at that time and who was the claimant's boyfriend, came to bring the claimant some breakfast. The claimant had not requested the boyfriend/employee to come to the store. The two had been having some personal difficulties, and the boyfriend/employee began trying to discuss those issues with the claimant. The claimant asked the boyfriend/employee to leave to avoid a conflict, but he did not do so immediately. The two exchanged loud angry words for about eight minutes before the

boyfriend/employee left. As the store was not open, there were no customers in the area; only the other employee was present to hear or see the argument, which did not become physical.

The employer learned of the dispute, presumably from the other employee who had been present. Mr. Price, the general manager, viewed the video surveillance of the incident, which did not contain any audio. He determined to discharge the claimant because of the employer's policy against fighting in the store, including verbal arguments.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the argument she had with the boyfriend/employee on May 2. Under the circumstances of this case, specifically, that the store was closed with no customers present, that the boyfriend/employee was not on duty and had not been asked by the claimant to come to the store, and that the claimant had told the boyfriend/employee to leave, the claimant's actions on May 2 were not misconduct. The employer has not met its burden to show that there was a final and current incident of disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's May 31, 2012 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs