

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WARREN D DAVIS

Claimant

APPEAL NO. 09A-UI-18532-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMERCIAL RESOURCES INC

Employer

Original Claim: 11/08/09

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Warren Davis filed a timely appeal from a representative's decision dated December 3, 2009, reference 01, which denied benefits based upon his separation from Commercial Resources, Inc. After due notice was issued, a telephone conference hearing was scheduled for and held on January 21, 2010. The claimant participated personally. The employer participated by Joe McCurdy, Maggie Johnson, and Bill Burch. Employer's Exhibits One through Seven and Claimant's Exhibits A through E were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Warren Davis was employed as a full-time kitchen supervisor for Commercial Resources, Inc., doing business as Continental Hotel, from July 22, 2009, until November 11, 2009, when he was discharged from employment. Mr. Davis was paid by salary. His immediate supervisor was Ms. Maggie Johnson, restaurant general manager.

Mr. Davis was discharged after company management concluded that the claimant had disregarded instructions about properly labeling and dating food stuffs to ensure that food items had not exceeded permissible times before being cooked and served. The employer had instructed the claimant that food stuffs must be used within five days' cooler time after they had been removed from company freezers. The employer also believed that the claimant had acted insubordinately by being argumentative when being instructed not to prepare or serve food stuff that had been determined as spoiled and not servable by Mr. McCurdy and Ms. Johnson on November 8, 2009.

On that date, Mr. McCurdy, a company food consultant, and Ms. Johnson, the restaurant general manager, noted a strong smell being emitted from a bucket containing chicken in the company's cooler area. It was further noted that the chicken had not been properly marked as

of the date it had been removed from the company freezers and it was concluded not only that the chicken was not fit for preparation or serving due to its conditions, but that it also had exceeded the five-day limit that Mr. Davis had been required to monitor and adhere to. When instructed not to use the chicken, Mr. Davis disputed the conclusion that the chicken was spoiled and not servable. He stated that there was nothing to serve in its place, and openly disputed the management decision to other staff members who were present.

Based upon the previous directives and reminders that had been issued to Mr. Davis, and his failure to comply with them, and the manner in which he disagreed with the work-related directive that had been given to him, a decision was made to terminate the claimant from his employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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.

In this case, the evidence establishes that Mr. Davis had been given a number of reasonable and work-related directives by his supervisor, Ms. Johnson, and by a company consultant, Mr. McCurdy. The claimant was aware that he was required to label and monitor the dates that food stuffs were removed from company freezers so as to ensure that food stuffs were utilized

within five days. When company management determined that Mr. Davis had not followed the five-day rule and instructed him not to use chicken that patently appeared to be spoiled and not servable, the claimant openly disagreed with the management decision and made negative references to the decision to kitchen staff. The claimant's failure to follow the directive to monitor food stuffs and the demeanor displayed by Mr. Davis when given a work-related directive showed a disregard for the employer's interests and reasonable standards of behavior that an employer has a right to expect of its employees under the provisions of the Iowa Employment Security Law. Benefits are denied.

DECISION:

The representative's decision dated December 3, 2009, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw