

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BYRON GRIFFIN**  
Claimant

**ZB RESTAURANT GROUP LLC**  
**ORCHESTRATE**  
Employer

**APPEAL 15A-UI-04725-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 10, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 28, 2015. Claimant participated. Employer participated through Rachel Ricketts, payroll specialist. Employer's Exhibit One was entered and received into the record.

**ISSUES:**

Was the claimant discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a prep cook beginning on June 12, 2014 through March 3, 2015 when he was discharged.

On March 2, the claimant called in sick to work. He spoke to Karen Davis, the manager who thought he sounded like he had been drinking so she asked him if he was drunk. The claimant became so upset that he got up and went into the restaurant to prove to Ms. Davis that he was ill. While there the claimant spit mucus either through his mouth or nose onto the floor of the restaurant. The claimant then raised his voice and made a scene in front of customers when he told Ms. Davis he was going to call corporate. The claimant had received a copy of the employer's rules and policies. Spitting mucus out of one's nose or mouth onto the floor in a restaurant establishment is a violation of health codes. There was no reason for the claimant to come to the restaurant after he had called in sick.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). There was no reason for the claimant to go to the restaurant after he had called in sick. He was angry and the administrative law judge concludes this spitting mucus on the floor was an intentional act that violates not only the employer's policies, but health code regulations. He then made a scene in front of coworkers and customers. His actions, although an isolated incident, do rise to the level of disqualifying misconduct. Benefits are denied.

**DECISION:**

The April 10, 2015 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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