

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LYNN P DOMINGUEZ

Claimant

APPEAL NO: 18A-UI-01403-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NOODLES & COMPANY

Employer

OC: 12/24/17

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 24, 2018, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 23, 2018. The claimant participated in the hearing. Peter Rondello, Area Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time journey leader (crew trainer) for Noodles & Company from August 19, 2015 to December 22, 2017. She was discharged for criticizing management.

On December 20, 2017, the employer gave employees holiday cards. In past years the cards contained a \$10.00 Target gift card but did not in 2017. The claimant felt slighted and was upset about the gift cards and at the very least implied General Manager Jessica Schaumburg had misused the money in the reward and recognition policy fund. Also on December 20, 2017, the claimant was upset to learn from Assistant General Manager Jodi Manning she would not be allowed the transfer she wanted because she did not like the management at that store. On December 21, 2017, the claimant, Ms. Schaumburg and Ms. Manning had a verbal altercation at the store. Ms. Manning felt the claimant was displaying a poor attitude. The claimant acknowledges she was disappointed about the transfer but denies that she had a bad attitude. The claimant did not have her uniform shirt tucked in and was not wearing cut gloves and Ms. Manning felt she had a very hostile demeanor on her shift. The claimant denied that as well. Ms. Manning confronted the claimant about her attitude and the claimant did not want to discuss the matter. Ms. Manning followed the claimant to the back of the restaurant to continue the discussion and a loud argument ensued which prompted other team members from the front of the store to go to the back to say they could hear the argument in the front as could customers. Ms. Manning told the claimant to leave at 1:00 p.m. but the claimant stayed until the

2:00 p.m., the scheduled end of her shift because she thought since there were no witnesses to Ms. Manning sending her home Ms. Manning would say she walked off the job. On December 22, 2017, Area Manager Peter Rondello went to the store to meet with the claimant about her attitude and ability to work with the restaurant management. The claimant assumed the meeting was going to be about the way Ms. Manning spoke to her. Mr. Rondello asked the claimant why she wanted to transfer and she stated her complaint that night shift employees were not prepping food for the day shift and she held those managers responsible. The claimant made that complaint several times over the last four months of her employment. Mr. Rondello then asked the claimant if she could work with the managers and the claimant said yes. Mr. Rondello then said, "I think it is best we terminate your employment. I have to support my managers." The claimant said, "I guess I never had a chance," and walked away. The claimant had not received any warnings during her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant's behavior regarding the employer's decision to forego giving employees a holiday gift card in 2017 and being denied a transfer was unprofessional and inappropriate. She implied Ms. Schaumburg had misspent the money in the reward and recognition fund and displayed a hostile attitude at work December 20 and 21, 2017, after also being denied a transfer. She argued with Ms. Manning in the back room and refused to leave the premises December 21, 2017, after Ms. Manning instructed her to go home which was insubordinate. The claimant made repeated complaints about the night shift not performing their jobs to the claimant's satisfaction.

That said, however, the employer testified the claimant had not exhibited this type of behavior in the past and the claimant never received a warning about her behavior during her tenure with this employer. Additionally, she did not know her job was in jeopardy. Ms. Manning, who was not made available to testify at the hearing, pursued the claimant into the backroom December 21, 2017, and escalated the situation further. The December 20 and 21, 2017, situations were a continuation of an incident rather than separate incidents. While the claimant showed poor judgement during an isolated incident of misconduct, her behavior does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The January 24, 2018, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn