

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTANY SEDLACEK
Claimant

APPEAL NO. 06A-UI-10718-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

G M R I INC
Employer

**OC: 10-01-06 R: 04
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 27, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 20, 2006. The claimant did not respond to the hearing notice and did not participate in the hearing. Brad Lybbert, General Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

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 server for Red Lobster from January 8, 2006 to September 30, 2006. On September 29, 2006, the claimant wrote a note to a customer stating, "Its illegal and inhuman to leave your dog in the car for a long period of time. Your lucky its not 100 (degrees) out!!!" (Employer's Exhibit One). She gave the note to another employee to place on the guest's car. The guest was upset about the note and explained to the employer that her dog was blind. Additionally, it was not a warm day and the dog was not in distress. The guest also stated she parked where she could watch the dog to insure he was okay in the car. The employer's policy states that embarrassing a guest can lead to immediate termination (Employer's Exhibit Two). The claimant was a no-call, no-show February 19, 2006, and received a verbal warning. The claimant received written warnings May 11, 2006, for calling in to say she had to drive her boyfriend to Cedar Rapids; May 14, 2006, for calling to say she would be late because her uniform was not dry; and July 12, 2006, for calling to say she was at the dentist and would call back but did not do so. The employer's policy states that four incidents resulting in warnings within a one-year period could result in termination. The employer terminated the claimant's employment following the situation with the guest's dog.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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). While the claimant may have been concerned about the dog in the car, she did not respond to the matter in a professional or appropriate manner as an employee. It was improper to leave a note on a customer's car, especially when she did not know the circumstances of why the customer left the dog in her car; and it was not a hot day, so the dog was not in danger. The claimant could have checked with a manager to help her determine what, if any, was the appropriate course of action; but, rather than do so, she made the decision to write the customer a note and have another employee place it on her car. The claimant had received three written warnings and knew, or should have known, that her job was in jeopardy. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's

interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The October 27, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$146.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw