

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANNA M RAMSEY
Claimant

APPEAL NO. 17A-UI-10825-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TIMOTHY O'DELL
Employer

OC: 09/10/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Timothy O'Dell (employer) appealed a representative's October 19, 2017, decision (reference 05) that concluded Janna Ramsey (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 9, 2017. The claimant participated personally. The employer participated by Timothy O'Dell, Owner, and Tammy Goad, Bar Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 23, 2017, as a part-time bartender. The claimant was unaware the employer had a handbook. The employer's handbook did not have an attendance policy. The employer was not happy with the claimant's performance and attendance. It had conversations with her but did not issue her any written warnings.

In early August 2017, some customers complained to the employer that the claimant said, "wait their f'ing ass" when they asked for lottery tickets. The claimant denied making the customers wait. The claimant may have been absent on September 10, 2017. She properly reported her absence due to illness on September 11, 2017. On September 12, 2017, the employer terminated the claimant. The employer told the claimant she was terminated for customer complaints.

The claimant filed for unemployment insurance benefits with an effective date of September 10, 2017. The employer did not provide the name and number of a person who would participate in the fact-finding interview on October 18, 2017. The employer did not hear the call from the fact-finder. It did not respond to the fact-finder's message because it did not receive the message for two days. The employer did not provide any documents for the fact finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish a final incident of job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

Inasmuch as the employer had not previously sufficiently warned the claimant about the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct.

The last incident provided by the employer occurred in early August 2017. The claimant was not discharged until September 12, 2017. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because she was an eye witness to the events for which she was terminated. The employer's testimony was often internally inconsistent.

DECISION:

The representative's October 19, 2017, decision (reference 05) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs