

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LAURA A HAYES
PO BOX 33
BEAVER IA 50013

COUNTRY KITCHEN
1703 S STORY ST
BOONE IA 50036

AMENDED

Appeal Number: 05A-UI-06398-CT
OC: 06/27/05 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Country Kitchen filed an appeal from a representative's decision dated June 9, 2005, reference 02, which held that no disqualification would be imposed regarding Laura Hayes' separation from employment. After due notice was issued, a hearing was held by telephone on July 7, 2005. Ms. Hayes participated personally. The employer participated by Carey Crowdy, Manager; Andrew Lynch, Supervisor; and Heidi Elliott, a former employee.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Hayes began working for Country Kitchen on December 2, 2004 as a server working from 30 to 35 hours each week. On or about May 17, 2005, she presented the employer with a doctor's statement indicating she was not to work for 30 days. Ms. Hayes had started working part time for Lake Shore Café in April of 2005. On the evening of May 17, the owner of Country Kitchen observed Ms. Hayes working at Lake Shore Café. Others reported having seen her working at Lake Shore Café. She told Heidi Elliott, who was a friend at the time, that she was working and being paid "under the table" by Lake Shore Café.

On May 25, Ms. Hayes went to Country Kitchen to get her paycheck. She was told by Andrew Lynch that she had to return her uniform in order to receive her check. She asked if she was fired and was told she would have to speak to the owner. Ms. Hayes told Mr. Lynch that she intended to file a claim for unemployment benefits. No one from Country Kitchen contacted her to advise that she still had employment.

Ms. Hayes filed a claim for job insurance benefits effective June 27, 2004. She filed an additional claim effective May 22, 2005 and reopened the claim effective June 12, 2005. Ms. Hayes was paid \$124.33 in job insurance benefits for the week ending June 18, 2005. She filed her current claim effective June 26, 2005 and was paid \$171.00 for the week ending July 2, 2005, \$171.00 for the week ending July 9, 2005, and \$171.00 for the week ending July 16, 2005..

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Hayes was separated from employment for any disqualifying reason. The employer disputes that she was discharged. However, under the circumstances, the administrative law judge concludes that it was reasonable for Ms. Hayes to assume she had been discharged. She was told she had to return her uniform in order to receive her paycheck. Although the employer intended to have a new hire use the uniform, this was not explained to Ms. Hayes. The administrative law judge believes most employees would assume they had been discharged if the employer requests the return of property belonging to the employer. Ms. Hayes questioned Mr. Lynch as to whether she had been discharged and he did not deny the fact. He did not tell her that she was fired but, he did not tell her she was not fired. Ms. Hayes indicated her intent to file a claim for unemployment benefits. This should have been sufficient to put the employer on notice that she considered herself separated from the employment. The employer did nothing to correct Ms. Hayes' perception that she had been discharged. Because she had a good-faith belief she had been discharged, Ms. Hayes did not contact the owner as suggested by Mr. Lynch.

For the reasons stated above, the administrative law judge concludes that the separation should be considered a discharge. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The administrative law judge believes the reason for Ms. Hayes' discharge was the fact that she was working elsewhere after she told Country Kitchen that she could not work for 30 days. Ms. Hayes worked as a server for both Country Kitchen and Lake Shore Café. If she could not work for

Country Kitchen, the employer had the right to expect that she would not be able to work for any employer.

The administrative law judge appreciates that Ms. Hayes had a doctor's statement taking her off work. However, she was willing to violate the doctor's recommendation by working at her other job. If she was, in fact, well enough to work, Country Kitchen had the right to expect that she would work for them rather than requiring that others fill in for her. Ms. Hayes denied that she was working for Lake Shore Café during the time her doctor had her off work. However, the administrative law judge found the employer's evidence on the issue more persuasive. Working elsewhere after telling Country Kitchen that she could not work constituted dishonesty on Ms. Hayes' part. It is concluded, therefore, that disqualifying misconduct has been established and benefits are denied.

Ms. Hayes has received \$637.33 in job insurance benefits since reopening her claim effective June 12, 2005. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated June 9, 2005, reference 02, is hereby reversed. Ms. Hayes was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Hayes has been overpaid \$637.33 in job insurance benefits.

cfc/pjs/kjw