

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MANUEL J CHAVEZ
Claimant

APPEAL NO: 17A-UI-06225-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIAMOND JO WORTH LLC
Employer

OC: 05/14/17
Claimant: Respondent (2)

Iowa Code § 96.2 A – Discharge

STATEMENT OF THE CASE:

Diamond Jo Worth, LLC, the employer, filed a timely appeal from a representative's decision dated June 8, 2017, reference 01, was denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on July 5, 2017. Claimant participated. The employer participated by Mr. Ted Valencia, Hearing Representative and witnesses, Ms. Lalyssa Slattum, Employer Relations Manager, and Ms. Pamila O'Connell, Kitchen Supervisor. Employer's Exhibits A, B, and C and Claimant's Exhibits 1 and 2 were admitted into the hearing record.

ISSUE:

Whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: Manuel Chavez was employed by Diamond Jo Casino from August 1, 2016 until May 19, 2017 when he was discharged from employment. Mr. Chavez was initially hired as a Custodian II then was transferred to the position of kitchen supervisor trainee on or about August 1, 2017. Mr. Chavez was employed full-time and was paid by the hour. His immediate supervisors were Chef Henry Garcia and Pamila O'Connell, kitchen supervisor.

Mr. Chavez was suspended from work on May 6, 2017 pending an investigation and discharged from employment by telephone May 19, 2017.

The events leading to Mr. Chavez's discharge from employment took place on April 29, 2017. On that date, the company's Executive Chef, Mr. Garcia noted that the food station that Mr. Chavez was assigned to was not ready to serve patrons. The Chef brought the condition of Mr. Chavez's food station to the attention of Ms. O'Connell, the kitchen supervisor.

Chef Garcia called the claimant and another line cook, Sheila to a meeting that day. Ms. O'Connell, the Kitchen Manager was also at the meeting. Sheila was a "line cook" who the claimant had been seen visiting with earlier that day.

During the meeting, Chef Garcia specifically instructed Mr. Chavez to follow Ms. O'Connell's work directives. Chef Garcia emphasized Ms. O'Connell's position stating "this is her kitchen". In addition to instructing the claimant to follow the kitchen supervisor's directions, the Chef specifically told Mr. Chavez that he was not permitted to talk to Sheila, the line cook, until his work station was complete and ready to serve patrons. Mr Chavez continued to dispute Ms. O'Connell's management authority over him. The claimant countered the directives given to him by stating "the kitchen is not Ms. O'Connell's kitchen, but the kitchen of Boyd Gaming Company". Although Mr. Chavez had been told not to have any further conversation with the line cook, he nevertheless spoke into the line cooks ear immediately as they left the meeting.

The Executive Chef and Ms. O'Connell concluded, based upon the claimant's statements and actions, that he was continuing to disregard the management authority of both the Chief Chef as well as Ms. O'Connell and was insubordinate as he did so. When Mr. Chavez was asked by Chef Garcia why he had disregarded the instruction that he was not to talk to Sheila, he cited his "First Amendment" right to free speech.

Chef Garcia gave Mr. Chavez the instruction to stay focused on his duties and to refrain from visiting with his co-worker until his station was ready because the employer had observed that the claimant had often spent substantial amounts of time visiting with the female line cook when he should have been devoting his time and efforts to the employer's food service interests.

After the meeting, Ms. O'Connell inquired from time to time about how things were going. Mr. Chavez considered this supervisor's inquiries to be provoking. Later that day, Mr. Chavez was summoned to a meeting and informed that he was being suspended pending further investigation.

After being suspended, Mr. Chavez wrote letters of complaint and explanation to Chef Garcia and to another individual in company management explaining his position, criticizing his immediate supervisor, and disputing lines of authority within the casino's food service areas. Mr. Chavez was informed of the employer's decision to discharge him by telephone on May 29, 2017.

It is the claimant's belief that his discharge from employment was related to another issue that he had with a female worker who had instructed him to enter and leave the kitchen area by specific doors, and because he had also written letters of complaint documenting his side of the April 29, 2017 chain of events.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the employer has sustained its burden of proof in establishing misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. The employer has.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case at hand, the evidence in the record establishes that Mr. Chavez initially was hired as a Custodial Worker II but later transferred to the position of "Kitchen Supervisor Trainee". As a trainee, Mr. Chavez was not yet given supervisory authority and been reminded on numerous occasions that he must follow the work directives that were given to him by Pamela O'Connell, the Kitchen Supervisor.

In spite of his classification as a "Supervisor Trainee", and the instructions of the Chef to follow Ms. O'Connell's directives, Mr. Chavez often disagreed with Ms. O'Connell's decisions and the directives that she was giving him. The claimant repeatedly showed a blatant disregard for Ms. O'Connell's management decisions and directives, although he had been placed on notice that Ms. O'Connell's work directives were to be followed.

The employer had also noted that Mr. Chavez had a proclivity for visiting extensively with Sheila and other workers and that the claimant had often gone to visit while his duties were not complete and his work station was not ready to serve patrons.

When this conduct was again observed on April 29, 2017, the employer followed a reasonable course of action by calling Mr. Chavez into a meeting and specifically telling him to listen to his supervisor, to focus on serving patrons and telling claimant, in effect, not to have any further conversations with a specific female line cook until his work station was ready to serve patrons. Mr. Chavez responded by disputing the rhetorical statement about who was the owner of the kitchen, Ms. O'Connell's right to direct him, and by talking further to the co-worker in the presence of the Executive Chef. The claimant's conduct was not only disrespectful and insubordinate, it also served to undermine the supervisory authority of not only his immediate supervisor but also that of the facilities Executive Chef. The claimant's actions constitute misconduct in connection with the work.

Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute over-payment. The administrative record reflects that the claimant has not received any unemployment insurance benefits since filing a claim with an effective date of May 14, 2017. The employer did not participate in the fact-finding interview.

DECISION:

The representative's decision date June 8, 2017, Ref 01 is reversed. The claimant was discharged for misconduct in connection with his work. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn