

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHYLA J SCHANK
Claimant

APPEAL NO. 11A-UI-16523-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

RASTRELLIS INC
Employer

**OC: 11/27/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated December 23, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 30, 2012. The claimant participated. The employer participated by Beth King, The record consists of the testimony of Beth King and the testimony of Chyla Schank.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a restaurant located in Clinton, Iowa. The claimant was hired in 2010 as a part-time waitress. Her last day of work was December 1, 2011. She was terminated on December 2, 2011.

The incident that led to the claimant's termination occurred on December 1, 2011. The restaurant was holding a big event – a wine tasting dinner. The claimant was scheduled to work at the dinner. This dinner requires extra work, including set-up and tear-down. One of the extra jobs is polishing lots of wine glasses.

Two of the managers each worked a table to assist in serving food. This was done in an effort to provide extra service and assistance to the wait staff. The claimant thought that any manager who worked a table should also be required to set-up, including polishing wine glasses, and tear down. She was angry that the two managers were talking to customers instead of really helping out. She complained to one of the cooks, who was also a manager, that the managers were taking advantage by working a table but not really helping out. She thought the managers were being the same as she was and she did not think this was fair. The managers were not taking any tips for their work.

The claimant continued to be upset and complain about management to Beth King, one of the managers who was also working that night. The claimant was yelling. Ms. King sent her home. The next morning the claimant was terminated by Ms. King for disrespect.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is no present to hear them. See Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990). In Henecke v. IDJS, 533 N.W.2d 573 (Iowa App. 1995), the Iowa Court of Appeals stated that an employer has the right to expect decency and civility from its workers. The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant became upset and angry because management was not "helping out" at a wine tasting dinner. The claimant believed that since members of management were serving food, management should also help with tear down and set up. The claimant seemed particularly incensed that the managers did not have to polish all the wineglasses. The claimant complained first to a cook, who was a manager, and then to Beth King, one of the other managers who was working. The claimant yelled and was disrespectful. She also mistakenly believed that the managers were getting tips when, in fact, the tips for those tables were going to the staff and not the managers.

Employers have the right to direct what jobs employees will do. Employees have the right to ask legitimate questions about work assignments. What the evidence in this case showed is that the claimant was rude, disrespectful, and yelled at her employer about what job or tasks management was supposed to be doing. The claimant's conduct violates the claimant's duty of civility and geniality owed by her to all employees. This is misconduct. Benefits are denied.

DECISION:

The representative's decision dated December 23, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw