

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN M CHADA
Claimant

APPEAL NO. 07A-UI-04828-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BENNIGAN'S - CEDAR RAPIDS
Employer

**OC: 04/15/07 R: 03
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 3, 2007, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on May 30, 2007. Claimant participated with Stacy Chada. Employer participated through Christi Randell, Mike Schoseldt and Susan Sigman and was represented by Deb Shelburne of Unemployment Services.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time server from October 20, 2005 until April 7, 2007 when he was discharged. On April 7, claimant came into the bar intoxicated and ordered food from Sigman and left without eating or paying for it so Schoseldt gave it to employees. When claimant returned he became upset and argumentative when asked to pay for the food. Schoseldt asked him repeatedly to leave because he was drunk and was eventually escorted out by security. A guest who had been sitting at the bar complained to Schoseldt that claimant threatened him under his breath saying, "If he fucks with my wife, I'll kill him." Sigman was also present.

Employer issued a verbal warning three weeks before the separation after claimant got in a fight with another server according to Lance Lanner, Manager. Employer sent him home and suspended him on December 6, 2006 because he was smoking at the bar while clocked in, not helping others and he got argumentative with the manager, Lance Lanner and Scott Lee. On October 24, 2006, he was written up for arguing with manager Scott Lee.

The claimant has received unemployment benefits since filing a claim with an effective date of April 15, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant's repeated argumentative behavior with managers in front of customers after having been warned is evidence of willful misconduct. Benefits are denied.

Iowa Code § 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 May 3, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$916.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css