

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRANDON J FOGUE
Claimant

MAF COMPANY
VICTORY LANE MOTORSPORTS CAFÉ
Employer

APPEAL 14A-UI-11963-H2
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/19/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 6, 2014, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in person hearing was held on January 13, 2015 at Des Moines, Iowa. Claimant participated. Employer participated through Mona Fickes, Owner; Dominic Viola, General Manager and Deanna Agee; Bar Manager. Claimant's Exhibits A was entered and received into the record. Employer's Exhibits 1 and 2 were entered and received into the record.

ISSUES:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a bartender beginning in January 2013 through October 8, 2014 when he was discharged.

The claimant had been given prior warnings by both Ms. Agee and Mr. Viola about his conduct while on the job. The claimant was expected to be out of the bar by 3:30 a.m. at the latest. He was not to allow anyone to drink in the establishment after 2:00 a.m. as it could cause the business to lose their liquor license. He was to ring up drinks on the point of sale (POS) system immediately after making the sale so he would not forget. All of the employees knew that the owner had video cameras installed in the facility and would periodically watch what was going on at the restaurant from her home.

On October 7 Ms. Fickes watched video from October 3 and 4. The video, watched by all at the hearing clearly shows the claimant failing to ring up purchases immediately and him still in the building at 4:30 a.m. The claimant also allowed customers to remain in the store until well after 2:00 a.m. The claimant's actions jeopardized the employer's liquor license and hence the profitability of the entire business. On October 2 the claimant had been given a final warning by

Ms. Agee and later pulled aside by Mr. Viola and specifically told he needed to comply with the rules or lose his job.

The claimant had been given similar warnings back in April 2014. Ms. Fickes had Ms. Agee review the surveillance video in May after claimant's warning to see if he was improving or following the rules. She found he was following the rules at that time.

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.

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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant was required to follow the rules for all bartenders. He did not. The administrative law judge is persuaded that

the claimant was not ringing up purchases immediately and he was allowing customers to drink in the restaurant after 2:00 a.m. The claimant was also seen in the establishment on October 4 well after 3:30 a.m. The administrative law judge is not persuaded by the claimant's unsubstantiated allegation that the video was altered. The claimant had ample warning and by his own admission simply chose not to follow all of the rules he had been given by the owner. Claimant's repeated failure to accurately perform his job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The November 6, 2014 (reference 01) decision is affirmed. 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs