

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY ROTE
Claimant

APPEAL NO: 15A-UI-10590-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DRM INC
Employer

OC: 08/30/15
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 18, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 5, 2015. The claimant participated in the hearing. Amanda Hart, Unit Director; Cindy Fosenburg, Assistant Unit Director; Sara Dilley, Opening Manager; and Susan Chmelovsky, Employer Representative participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time crew fry station employee for Arby's from July 6, 2012 to August 27, 2015. She was discharged following a verbal and physical altercation with a co-worker.

On August 27, 2015, Raquel Rios received a drive through order for onion rings and went to drop the product in the fryer. The claimant had been cleaning and filtering the oil and was upset that Ms. Rios dropped the product. A verbal altercation ensued where the claimant called Ms. Rios either a "fat cow" or a "fat bitch" and Ms. Rios called the claimant "evil." Ms. Rios then pushed or shoved the claimant and she pushed or shoved Ms. Rios back. This incident took place in front of the fryers which are located on rolling carts and which could have easily led to injury if either woman was pushed into the 350 degree fryer oil or the unit that housed the oil. The employer sent the claimant home and then terminated both the claimant and Ms. Rios' employment (Employer's Exhibit One).

The employer has a zero tolerance of employee violence policy which the claimant signed indicating receipt July 11, 2012 (Employer's Exhibit Two).

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 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.

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant acted unreasonably, inappropriately and unprofessionally August 27, 2015, when she called Ms. Rios a "fat cow" or a "fat bitch." Whether that was before or after Ms. Rios called the claimant "evil" is really of no consequence. Both parties had the opportunity to walk away without engaging in any name-calling or shoving but neither did so. The fact that this situation occurred directly in front of the 350 degree fryers makes it even more dangerous than a simple

name-calling and brief shoving match as either of the women could have been pushed into the rolling fryers and been severely burned or splattered with hot oil.

Ms. Rios had every right to try to make the customer's food. Even if she initially placed the onion rings in a fryer without grease the claimant could have avoided the situation by simply dropping the order herself as was her job. Regardless of what Ms. Rios did by dropping the food into the fryer, it did not warrant the name-calling and shoving the claimant engaged in because she was upset with Ms. Rios.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The September 18, 2015, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css