

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CINDY K WILSON  
1414 REBECCA ST APT 1  
SIOUX CITY IA 51103-2452

NIPPERS INC  
1528 CENTER  
SIOUX CITY IA 51103

Appeal Number: 06A-UI-05047-S2T  
OC: 04/09/06 R: 01  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cindy Wilson (claimant) appealed a representative's May 8, 2006 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Nippers (employer) for conduct not in the best interests of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 25, 2006. The claimant participated personally. The employer participated by Kenneth Vuncannon, President. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 17, 2004, as a full-time bartender. The claimant was also a customer in the bar. She had gotten into a fight when she drank tequila in the bar so the employer restricted her from drinking tequila.

On April 12, 2006, the employer stopped by the bar when he saw police cars outside. After taking care of the situation the employer sat down for a soft drink and played a game. The claimant had completed her shift and was drinking beer when she got into an altercation with a customer. The customer threw beer in the claimant's face. Customers held the claimant and the customer apart from one another. The employer walked over and tried to calm the claimant. The claimant became angry at the employer for not asking the customer to leave. The claimant shoved and hit the employer. The employer told her she was fired and he returned to his soda.

The employer thought better of the matter and told the claimant she was not fired but restricted from drinking alcohol in the bar. The claimant was angry. She shoved and hit the employer. The employer said she was fired. The claimant retrieved her personal items from behind the bar and said the employer would "regret the fucking day we ever met."

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the employer's testimony to be more credible because the employer offered written statements which corroborate his testimony. In addition, the claimant was under the influence of alcohol at the time of the incident.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons, the administrative law judge concludes she was.

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.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). “[A]n employer has the right to expect decency and civility from its employees.” The court found substantial evidence of offensive words and body language in the record of the case. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). A threat to make it miserable for the employer is sufficient to establish misconduct. Myers v. Employment Appeal Board, 462 N.W.2d 734 (Iowa App. 1990).

An employer has a right to expect employees to conduct themselves in a certain manner even in a drinking establishment. The claimant disregarded the employer's right by physically and verbally assaulting the employer. The claimant's disregard of the employer's interests is misconduct. As such, she is not eligible to receive unemployment insurance benefits.

#### DECISION:

The representative's May 8, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

bas/kkf