

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

NICOLE I BOYD
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COUNCIL BLUFFS IA 51501

LJS RESTAURANTS INC
LONG JOHN SILVERS
C/O JONJAY ASSOCIATES
PO BOX 182523
COLUMBUS OH 43218-2523

Appeal Number: 05A-UI-01934-JTT
OC: 02/14/05 R: 01
Claimant: Respondent (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, 4th 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:

Long John Silver's filed a timely appeal from the February 14, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 10, 2005. Nicole Boyd participated in the hearing and presented additional testimony through witness Brandy Penny. The employer participated through Brian Wake, General Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Nicole Boyd was employed by Long John Silver's as a full-time Team Leader through January 19, 2005, when General Manager Brian Wake discharged her for alleged misconduct.

The incident that prompted Mr. Wake to discharge Ms. Boyd occurred on January 18, 2005. On that date, Ms. Boyd responded to a customer complaint at the drive-through window at approximately 9:00 p.m. The "customer" was actually a new regional vice president, who had apparently gone through the drive-through with the specific intention of testing the restaurant staff. The regional vice president was not satisfied with Ms. Boyd's handling of the situation and felt strongly that she had not adhered to established policy regarding the handling of customer complaints. The regional vice president contacted the general manager. The general manager proceeded to discharge Ms. Boyd based on the incident. Brandy Penny was the restaurant employee who had originally served the regional vice president at the drive-through window. Ms. Penny was standing next to Ms. Boyd at the time Ms. Boyd interacted with the regional vice president. Ms. Penny characterized Ms. Boyd's handling of the "customer complaint" in a much different and more positive light.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Boyd was discharged for misconduct in connection with her employment.

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, (8) provide:

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).

(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.

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). Before the administrative law judge can find that an employee was discharged for misconduct, the evidence in the record must establish the existence of a "current act" of misconduct. See 871 IAC 24.32(8). Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification. See 871 IAC 24.32(9).

The evidence in the record fails to establish that Ms. Boyd was discharged for misconduct. The evidence fails to establish the existence of a "current act" of misconduct. See 871 IAC 24.32(8). The record does not establish that Ms. Boyd engaged in any willful or wanton disregard of the employer's interests in her handling of the regional vice president. See 871 IAC 24.32(1)(a). Instead, the employer simply found her handling of the situation to be unsatisfactory. Mere unsatisfactory performance or an isolated good faith error in judgment does not constitute misconduct for the purpose of determining eligibility for unemployment insurance benefits. See 871 IAC 24.32(1)(a). Accordingly, no disqualification will enter.

DECISION:

The Agency representative's decision dated February 14, 2005, reference 01, is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

jt/tjc