

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA K GLADE-SEIBERT
Claimant

APPEAL NO. 11A-UI-00989-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HUCKLEBERRY ENTERTAINMENT
Employer

OC: 10/31/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 19, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on February 22, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Deb Gibbs participated in the hearing on behalf of the employer. This is a duplicate decision to the one issued in 11A-UI-00990-SWT, which appears to be due to wages being reported under two location account numbers for this employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time as a restaurant supervisor for the employer from March 6, 2008, to October 30, 2010. In May 2010, the claimant had given a below standard rating for customer relations. She had been warned on July 13, 2010, about being in the storeroom when employees needed help on the floor. On September 28, 2010, she was warned about her husband being in the work area, causing her to neglect customers. She was told that if her conduct continued, she could be discharged.

On October 29, 2010, the restaurant was very busy. The claimant became upset by a rude customer who was a former employee of the restaurant. The customer insisted that a pizza be remade because the person rolling out the pizza dough was not wearing gloves. The claimant went ahead and had the pizza redone even though employees were not required to wear gloves to roll out dough. The normal practice in the restaurant was to give customers their drinks right away at the counter. A customer asked that the drinks be delivered along with the food. The claimant told the customer that they normally did not deliver drinks to customers. The claimant was still upset with the situation with the other customer and was abrupt with the customer. The customer got angry at the claimant. The claimant then told the customer that she would have the drinks delivered. Other employees witnessed how the claimant treated the customer and complained to the restaurant manager, Deb Gibbs, and explained what had happened.

On October 30, 2010, Gibbs discharged the claimant based on her conduct toward the customer on October 29, and her prior history of discipline.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of courteous behavior the employer had the right to expect of the claimant. The claimant admitted that she argued with the customer and could have come off as being rude. She had been warned about similar conduct of neglecting customers before. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated January 19, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw