

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMI A STRIBLING
Claimant

APPEAL NO. 06A-UI-11215-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GMRI INC
Employer

**OC: 10-+29-06 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated November 15, 2006, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 6, 2006. The claimant participated. The employer participated by Mike Briese, Manager.

ISSUE:

At issue in this matter is whether Ms. Stribling was separated from employment for any disqualifying reasons.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds the claimant was employed by the captioned company doing business as Olive Garden from November 27, 2005 until October 29, 2006 when she was discharged from employment. Ms. Stribling held the position of waitress. She was employed on a full-time basis. Her immediate supervisor was Candis Jemmen.

Ms. Stribling was discharged following an incident which occurred on or about October 29, 2006. On that date the claimant and another waitress were having a minor dispute about which waitress would be required to work later. Because of the complaints of the other waitress who the claimant had a good working relationship with, Ms. Stribling said to the other waitress that she was being "a whiny bitch." A few moments later as the claimant was describing the issue to another employee, the other waitress who had overheard the conversation angrily pushed her way to the claimant using vial language in an angry manner that was disruptive to the dining area. The other waitress' angry response and conduct was unexpected. Ms. Stribling, at the employer's request prepared a statement regarding the incident and what had led to it. Both Ms. Stribling and the other waitress were apologizing to each other and considered the matter closed. Based upon the disruptive nature of the outburst in the dining area, the restaurant manager considered both the conduct of the offending waitress and Ms. Stribling to be a violation of the company's "compatibility" policy which prohibits quarreling, fighting, the use of

abrasive language and requires that guests and employees be treated with consideration and respect.

REASONING AND CONCLUSIONS OF LAW:

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.

Ms. Stribling was discharged from her employment based upon an incident that occurred on or about October 29, 2006 after a comment Ms. Stribling made to another waitress subsequently caused the other worker to become unreasonably angry causing a disruption in the employer's dining area. The evidence establishes that Ms. Stribling and the other waitress had worked together in the past and appeared to have had a good working relationship. Some joking banter and the use of what otherwise might be inappropriate language appears to be common in the kitchen areas. In response to an ongoing minor exchange about who would work later that night, Ms. Stribling referred to the other waitress as a "whiny bitch." The other waitress did not react angrily at the time. However, subsequently the other waitress overheard Ms. Stribling talking to another employee about the issue and became unreasonably angry, pushed through other workers and angrily confronted the claimant in the presence of diners using inappropriate angry language. As this conduct was disruptive of the dining area, the employer discharged the offending waitress as well as Ms. Stribling for violation of the restaurant's compatibility policy that prohibits quarreling, abusive language and treatment of employees or guests without undue consideration and respect.

While the administrative law judge is cognizant that the claimant's statement to the other waitress in the kitchen was believed to be the precipitating factor that caused the disruptive outburst in the dining area, the administrative law judge is of the opinion based upon the evidence at the hearing that the claimant's conduct did not rise to the level of intentional disqualifying misconduct.

Based upon the evidence in the hearing record, the administrative law judge is of the opinion that the claimant's conduct was an isolated instance of poor judgment that did not rise to the level of intentional disqualifying misconduct. Ms. Stribling testified that she and the other waitress had a friendly relationship and the use of similar conduct and language in the kitchen area was not unusual. The claimant did not reasonably foresee that the other waitress later in

the work shift in a different area of the facility would become unreasonably angry and disruptive in the presence of restaurant diners. The record does not indicate that Ms. Stribling had been previously warned or counseled for similar behavior or that, in the past, the claimant's statements or demeanor had been unacceptable.

The question in this case is not whether the employer has the right to discharge Ms. Stribling for the above-stated reasons but whether the discharge was disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate Ms. Stribling may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge finds that the claimant's conduct did not rise to the level of intentional disqualifying misconduct so as to find the claimant ineligible for benefits.

DECISION:

The November 15, 2006, reference 01, decision is affirmed. The claimant is eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of the law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/kjw