

claimant that he must stay within the food and beverage department. The restaurant hours are 5:00 p.m. to 9:00 p.m. and the deli is open from 8:00 a.m. to midnight.

On August 8 at 5:20 p.m. and 9:15 p.m. the surveillance cameras recorded claimant in the east vestibule which was no where near the food and beverage areas or its employees. He stood and watched a security guard and security supervisor engaged in horseplay for approximately 40 minutes. They had not called him to assist with an intoxicated guest. He was supposed to be supervising the restaurant and the deli concession. At 11:09 p.m. after the restaurant was closed, cameras monitored claimant in the east vestibule for 40 minutes.

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.

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).

While employer had not warned claimant about the behavior in the past, he was told just the day before to remain in the food and beverage areas where his charges work. His deliberate

disregard of that specific instruction, not once but three times the next day, is sufficient evidence of a deliberate disregard for employer's instructions and amounts to misconduct. Benefits are denied.

DECISION:

The August 31, 2005, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

dml/s