

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

JAMIE W GARCIA  
702 – 21<sup>ST</sup> ST APT 1  
ROCK ISLAND IL 61201

ISLE OF CAPRI – BETTENDORF  
1777 ISLE PARKWAY  
BETTENDORF IA 52722

Appeal Number: 04A-UI-05888-HT  
OC: 04/25/04 R: 12  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Jamie Garcia, filed an appeal from a decision dated May 17, 2004, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 18, 2004. The claimant participated on his own behalf. The employer, Isle of Capri, participated by Human Resources Jason True.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jamie Garcia was employed by Isle of Capri from August 12, 2002 until April 27, 2004. He was a full-time food server.

From August 25, 2003 until April 3, 2004, Mr. Garcia received four warnings regarding his conduct. These were prompted by complaints from customers about him being inattentive, rude, making the guest's feel "rushed," and not delivering food and drinks when ordered. The final warning notified him his job was in jeopardy if there were any further complaints.

The claimant was capable of good guest service in the past because he generally received favorable reviews. However, the managers felt there were simply days when he showed up to work "with a bad attitude," and it was during those times that the customer complaints would be received.

On April 24, 2004, more guests complained to Assistant Manager Jessie Anderson about the same types of problems. Restaurant Manager Danielle Drexler contacted the guests the next day and received more details regarding the complaint, but the general nature was the same. The claimant was discharged by Mr. Anderson by phone on April 27, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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).

It is evident the claimant was capable of providing good guest service. His reviews were generally favorable. However, the customer complaint which led to his discharge was not an isolated incident. The complaints received over the course of the last nine months of his employment were about the same problems of rudeness and inattentiveness to guests. This caused customer dissatisfaction, which is detrimental to Isle of Capri, which, as any business, relies on guests returning for repeat business. As the dissatisfaction was generated by the claimant, Mr. Garcia's conduct must be considered as conduct not in the best interests of the employer. He is disqualified.

#### DECISION:

The representative's decision of May 17, 2004, reference 02, is affirmed. Jamie Garcia is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjf