

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA R BROWN
Claimant

APPEAL NO. 08A-UI-03871-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAIRFIELD FAMILY RESTAURANT
Employer

**OC: 03/16/08 R: 03
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Fairfield Family Restaurant filed an appeal from a representative's decision dated April 11, 2008, reference 01, which held that no disqualification would be imposed regarding Cynthia Brown's separation from employment. After due notice was issued, a hearing was held by telephone on May 6, 2008. Ms. Brown participated personally. The employer participated by Asli Theobold, Owner, who offered additional testimony from Karen Crees and Shawn Lox. The hearing record was left open with the intention of scheduling an additional hearing to take testimony from the employer's remaining witnesses. The employer notified the administrative law judge on May 8 that there would be no additional testimony. Inasmuch as Ms. Brown had already given her testimony, the hearing record was closed on May 8, 2008.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Brown was employed by Fairfield Family Restaurant from February of 2007 until January 15, 2008. She worked from 25 to 35 hours each week as a waitress. On January 15, the owner of the business, who does not like to wait on tables, indicated she might have to act as a waitress because they were short-staffed. In response, Ms. Brown "huffed" and rolled her eyes. The owner then called her downstairs and discharged her from the employment.

In making the decision to discharge, the employer also considered the fact that Ms. Brown was sometimes irritable at work. Some of her coworkers complained that she was disrespectful and bossy at times. They also complained that she was "flighty," moody, and argumentative. Some coworkers felt she was a bully. There was one occasion on which she referred to a coworker as a "bitch." The employer had spoken to Ms. Brown about her moodiness.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Before a disqualification is imposed, the evidence must establish that the discharge was based on a current act that constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). Ms. Brown's discharge was prompted by the fact that she "huffed" and rolled her eyes when the owner indicated she, the owner, might have to work as a waitress. Her actions were not so outrageous as to constitute an act of misconduct.

The administrative law judge does not doubt that Ms. Brown was a balky and argumentative employee. However, she did not willfully and wantonly disregard the best interests or standards of the employer. It is unreasonable to expect employees to be docile and well-mannered at all times or that employees will always get along with each other. The evidence failed to establish that Ms. Brown's interactions with her coworkers constituted substantial misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, it is concluded that disqualifying misconduct has not been established by the evidence and benefits are allowed.

DECISION:

The representative's decision dated April 11, 2008, reference 01, is hereby affirmed. Ms. Brown was discharged by Fairfield Family Restaurant but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs