

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANE C EVERSOLL**  
Claimant

**APPEAL NO: 13A-UI-11170-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REBITRZER'S BAR & GRILL LLC**  
Employer

**OC: 08/25/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated September 27, 2013, reference 01, that held the claimant was not discharged for misconduct on August 25, 2013, and benefits are allowed. A telephone hearing was held on October 24, 2013. The claimant participated. Deiter Rebitzer, Owner, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired as a cook on April 14, 2012, and last worked for the employer as a full-time kitchen manager on August 25, 2013. The employer let him go on August 25. When claimant asked why he was told he should know why.

The employer perceived claimant was not performing his duties, but it failed to issue him any verbal or written warning.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on August 25, 2013.

The employer failed to establish the required standard of behavior for performing work duties due to a lack of a verbal or written warning. Claimant did not know he was failing to perform his work to the satisfaction of his employer. Job disqualifying misconduct is not established.

**DECISION:**

The department decision dated September 27, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct on August 25, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs