

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ZANE A INGLORION**

Claimant

**APPEAL NO: 14A-UI-09453-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOCC INVESTMENTS LLC**

Employer

**OC: 08/10/14**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's September 3, 2014 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the October 27 hearing by phone. Tricia Norstrud, the human resource manager, appeared for the in-person hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 26, 2014. The employer hired the claimant to work as a part-time bartender, but he worked full-time hours. The claimant and a manager, B.B., did not get along. The claimant considered some of B.B.'s comments at work offensive.

In July 2014, the claimant, B.B., C.H. and upper level management, J. and T., had a meeting. J. told B.B. that he had stack of complaints by members and employees against him and if B.B. did not change, he would be discharged. After the July meeting, the claimant believed B.B. made numerous complaints against the claimant.

On August 8, the claimant when the claimant came to work, B.B. was talking to a member. B.B. told the member and claimant that he was eating fried chicken, collard greens and yams or soul food now. The claimant joined in the banter and made a comment about whether B.B.'s hair would grow in nappy. B.B. is bald. No one said anything and B.B. continued on bantering. B.B. also discussed future events that were coming up at the bar. The claimant made the comment in the spirit of the bantering that was going on. He had not meant the hair commit to be offensive or as harassment.

On August 11, B.B. reported to the human resource department that the claimant made a racially discriminating comment to him on August 8 that he found offensive and amounted to a personal attack. The employer concluded the claimant violated the employer's anti-harassment policy.

On August 13, when the claimant reported to work after being off on August 11 and 12, the employer discharged him. The employer told the claimant he was discharged for making a racial comment to B.B. The claimant denied making any racial comment to B.B. and asked the employer to talk to B.B. J., a club house manager, was called and told the claimant that he was sick of the claimant and B.B. and he was going to rid part of the problem by terminating the claimant's employment.

The claimant established claim for benefits during the week of August 10, 2014. The employer is not one of the claimant's base period employers.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the evidence presented at the hearing, the claimant's comment about how person's hair might grow, may not have been politically correct, but was made in jest when his manager and he were bantering with a member. This comment by itself does not establish that the claimant violated the employer's non-harassment policy or that he made a derogatory racial comment. The club manager's statement that he was sick of both the claimant and B.B. and was going to get rid of part of the problem by discharging the claimant is telling. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of August 10, 2014, the claimant is qualified to receive benefits.

Since the employer is not a base period employer, during the claimant's current benefit year the employer's account will not be charged.

**DECISION:**

The representative's September 3, 2014 determination (reference 03) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of August 10, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css