

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MANNY SEAY
Claimant

APPEAL NO. 12A-UI-14794-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLAZIN WINGS INC
Employer

**OC: 11/04/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 3, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 18, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Michele Hawkins participated in the hearing on behalf of the employer with a witness, Angela DeRidder. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked about 30 to 36 hours per week for the employer as a cook from May 17, 2012, to November 3, 2012. He was informed and understood that under the employer's work rules, employees were prohibited from verbally harassment and from creating an offensive or hostile work environment and being insubordinate to a supervisor. On August 4, 2012, the claimant was counseled after he used profanity in the workplace after being told that the radio in the kitchen needed to be turned down. He was warned that failing to improve his conduct could result in discipline, including termination.

On November 3, 2012, the claimant expressed displeasure at the general manager for having to return from break earlier than he wanted by directing loud derogatory language and profanity toward her.

On November 4, 2012, the general manager decided after conferring with corporate management that the claimant was discharged due to his conduct on November 3 along with his past history of discipline.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule and warning was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated December 3, 2012, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css