

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE R CLAYTON
Claimant

APPEAL NO. 09A-UI-11867-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES
Employer

**Original Claim: 07/12/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

IOC Services (employer) appealed a representative's August 14, 2009 decision (reference 01) that concluded Julie Clayton (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 15, 2009. The claimant participated personally. The employer participated by Sara Frank, Benefits and Training Supervisor. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on April 11, 1996, as a full-time floor supervisor/pit manager. The claimant signed for receipt of the employer's handbook. The claimant was not given a copy of the Standard Operating Procedures (SOP). The SOP indicates that the employee must notify security when a guest becomes intoxicated. The guest must be removed from the facility in a timely manner. The employer did not issue the claimant any warnings during her employment.

On July 7, 2009, a guest was visibly intoxicated. The claimant called security and an officer appeared at 10:11 p.m. The claimant called over another employee so there would be one employee watching the tables and one employee to speak to the intoxicated guest. The officer told the claimant to wait 15 minutes for the shift to change. The claimant asked the officer if the officer wanted to wait so the officer would not have to handle paperwork and waste time. The officer answered affirmatively. The claimant thought this was odd. She waited for the other supervisor to return from break at 10:17 p.m. and called security. The second officer did not arrive until 10:36 p.m. The guest left the property at 10:43 p.m.

The employer thought the claimant should not have waited for so long from the time the first officer refused to help to call for the second officer. The employer suspended the claimant on July 10, 2009, and terminated her on July 13, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. In this case, the claimant did not understand that her decision to wait seven minutes before she called for another security guard would result in her termination. The SOP does not state a clear time allowance for events to occur. The employer has not met the burden of proof to establish that claimant acted

deliberately or negligently in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The representative's August 14, 2009 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw