

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KANDY D SPAULDING
Claimant

APPEAL NO. 09A-UI-07092-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES LLC
Employer

**Original Claim: 04/05/09
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

IOC Services, L.L.C. (employer) appealed a representative's May 4, 2009 decision (reference 01) that concluded Kandy D. Spaulding (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on June 3, 2009. The claimant participated in the hearing. John Stanford appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 28, 2008. She worked full time as buffet cook at the employer's Waterloo, Iowa casino. Her last day of work was February 15, 2009. The employer suspended her that day and discharged her on February 16. The stated reason for the discharge was throwing food at another employee on February 11.

The buffet was closed and the claimant was removing desserts from the buffet when a waitress came by the buffet at approximately 9:30 p.m. and took a cookie. At least somewhat in fun, the claimant told the waitress not to take another cookie. The waitress then took another cookie and at least teasingly dared the claimant to do something about it. The claimant then threw a brownie with whipped cream at the waitress so that it hit at least the waitress' neck. The waitress was shocked, initially responding with nervous laughter, but immediately left the area. She returned a short time later crying and upset, wanting to discuss the matter. The claimant declined to discuss the matter, so the waitress reported the matter to management. After taking statements from the claimant and the waitress, the employer determined to discharge the claimant due to the incident, which it considered a violation of its workplace violence policy.

The claimant established a claim for unemployment insurance benefits effective May 4, 2009. The claimant has received no unemployment insurance benefits since the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Violence and fighting at work can be misconduct, even if it was intended only to be horseplay. Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995). The claimant's throwing of the brownie at her coworker shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's May 4, 2009 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 16, 2009. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw