

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ITEVIS D HAYES**  
Claimant

**APPEAL NO: 13A-UI-12808-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLAZIN WINGS INC**  
Employer

**OC: 09/01/13**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's November 6, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the December 9 hearing. Roxanne Rose represented the employer. Chad Miller, the general manager, and Brian Kamm, the kitchen manager, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer as a line cook in February 2011. The claimant worked an average of 35 hours a week. Prior to September 4, 2013, the claimant's job was not in jeopardy. At various times the employer had talked to the claimant about his attitude.

When the claimant started working, he received a handbook of the employer's policies. He read the policy handbook and understood employees could be discharged if they threatened anyone at work or were insubordinate.

During his employment, the claimant and Kamm joked around at work. The claimant frequently said he would not do something, but did it because he had only been joking with Kamm. On September 3, 2013, the claimant was scheduled to be the first employee to go home when his work was finished. He asked the employer when he would be asked to go home. Kamm told him he could leave after he portioned some romaine lettuce and chicken that had been diced. Instead of portioning the lettuce, the claimant ate the lettuce. Even though the claimant told Kamm he would not portion out the lettuce or chicken, he went to do the work Kamm told him to do. Kamm understood the claimant complained to other cooks about this work.

After Kamm learned the claimant ate the lettuce, he clocked out the claimant and told him to go home. The claimant made statements that he did not want to go home and would break car windows and slash tires of managers. Another manager, Katie Malone, was in her office and came out when she heard noise. She told the claimant to go home or she would call the police. Before the claimant left work, he swore at Malone. Malone went to her office and called Miller to come to work.

Miller lives just a short distance from work and went to work immediately. He saw the claimant outside and talked to him briefly. The claimant told him the problem was that Katie was being Katie. The claimant tried to explain what happened, but Miller told the claimant he needed to talk to Kamm and Malone first.

On September 5, the employer discharged the claimant after learning Kamm felt threatened by the claimant's conduct on September 3. The claimant understood he had been discharged for eating Romaine lettuce on September 3.

The claimant established a claim for benefits during the week of September 1, 2013. The claimant and employer participated at the fact-finding interview. The claimant has filed claims for the weeks ending September 7 through December 7, 2013. He has received a gross benefit payment of \$2587 in benefits for these weeks.

#### **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 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).

On September 3, the claimant may have started out joking with Kamm about work he would or would not do. Malone may not have known how the claimant and Kamm interacted with one another. She became involved in this situation between the claimant and Kamm. The claimant admits he swore at her after she told him to home.

After Malone contacted Miller, he came to the restaurant immediately and saw the claimant outside. While Miller did not want to get the claimant's version of events at that time, the claimant told him that Katie was being Katie. Even though Miller talked to both Kamm and Malone about the incident, he did not ask the claimant for his version of the events. Miller concluded the claimant had been insubordinate when he swore at Malone, a manager. Even though the claimant concluded Malone should not have interfered, she was a manager and had the authority to send the claimant home. The claimant became upset after she told him she

would call the police if he did not leave and swore at her before he left. The claimant's conduct on September 3, swearing at a manager, amounts to work-connected misconduct. As of September 1, 2013, the claimant is not qualified to receive benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b.

Based on the decision for this appeal, the claimant is not legally entitled to receive benefits as of September 1, 2013. This means he has been overpaid a total of \$2587 in benefits he has received for the weeks ending September 7 through December 7, 2013.

Even though the claimant is not at fault in receiving the overpayment, the employer participated at the fact-finding interview. As a result, the claimant is legally responsible for paying back benefits he was not legally entitled to receive.

**DECISION:**

The representative's November 6, 2013 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 1, 2013. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

The claimant has been overpaid a total of \$2587 in benefits he received for the weeks ending September 7 through December 7, 2013. Even though the claimant is not at fault in receiving the overpayment, he is legally responsible for paying back benefits he was not legally entitled to receive.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs