

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**APRIL M CONNOLLY**  
Claimant

**APPEAL NO. 11A-UI-13995-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JUNCTION 21 LTD**  
Employer

**OC: 08/21/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated October 20, 2011, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 16, 2011. Claimant participated. Employer participated by John Lehmann, owner. Kathy Ender and Jane Breitsprecker. The record consists of the testimony of John Lehmann; the testimony of Kathy Ender; the testimony of Jane Breitsprecker; and the testimony of April Connolly.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a restaurant located in Peosta, Iowa. The claimant was hired in March 2010 as a part-time waitress. She also began bartending in April 2011 and continued working as a server. The claimant's last day of work was October 4, 2011. She was terminated on October 4, 2011.

The incident that led to the claimant's termination occurred on October 4, 2011. The claimant was asked by the owner, John Lehmann, to take some clean dishes out of the wash room and return them to the dining room. The claimant refused to do this. She told Mr. Lehmann that this was not her job. Her comments were heard by Kathy Ender, who did prep work and cooking, and Jan Breitsprecker, another waitress. All waitresses were required to take clean dishes out of the wash room. The claimant had refused to take out dishes and do other jobs on previous occasions.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden of proof to show misconduct.

The greater weight of the evidence established that the claimant refused a direct instruction from one of the owners of the restaurant on October 4, 2011. The claimant's testimony that she did not refuse to take out dishes, is at odds with the testimony of Mr. Lehmann and two other employees. All three of these witnesses said that the claimant refused to take out the dishes and said that this was not part of her job. Taking out dishes was part of her job. There was also

evidence that the claimant had refused to do this in the past. Mr. Lehmann testified that he had simply had enough when the incident occurred on October 4, 2011.

The claimant said that her blood sugar was low and that was why she did not take out the dishes. No one remembers this statement. Mr. Lehmann testified that if she had said she needed to eat something he would have certainly let her do it. The claimant may have had a problem with her blood sugar but this does not appear to have been related to the refusal to take out the dishes.

A reasonable inference from the evidence is that the employment relationship between the claimant and Mr. Lehmann had been deteriorating for some time. The claimant felt that something was wrong with her pay stubs relative to her tips. She wanted more hours but when offered hours on a Sunday, she would refuse to work. The testimony of the witnesses showed that the claimant refused to follow a direct order from her supervisor and do a job that was part of her job responsibilities. The claimant may not have wanted to do the job. Her refusal to do it constitutes insubordination, which is misconduct. Benefits are denied.

**DECISION:**

The decision of the representative dated October 20, 2011, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs