

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA S TACKETT
Claimant

APPEAL NO: 13A-UI-00123-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBOCS INC
Employer

OC: 12/02/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 28, 2012 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 did not respond to the hearing notice or participate in the hearing. John Harshbarger, an associate manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The employer hired the claimant as a part-time server on April 23, 2012. The employer's policy requires servers to greet seated guests within a minute of the guest being seated and to immediately input an order. The employer expects guests to have ordered food within ten minutes.

On November 21, the claimant forgot to input an order. Guests for this order had to wait over 15 minutes for their food. The employer talked to her about this incident. The claimant explained that this had been oversight on her part. On November 22, 2012, the claimant received a final written warning for failing to follow the employer's policy. This warning occurred because the claimant failed to greet guests within a minute of the guests being seated. The employer did not charge these guests for food because they waited over five minutes after being seated before the claimant greeted them.

On November 30, the employer discharged the claimant for again failing to follow the employer's policy. The employer's witness did not know what happened on November 30, but assumed the claimant again had not greeted guests within a minute of the guests being seated. Another manager discharged the claimant on November 30, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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).

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. 871 IAC 24.32(8).

The employer established business reasons for discharging the claimant. But, the evidence does not establish what the claimant failed to do correctly on November 30, 2012. The employer's witness surmised the claimant again did not timely greet seated customers, but he was not working on November 30 and there was no written documentation about what happened on November 30. As a result, the facts do not establish that the claimant committed a current act of work-connected misconduct. As of December 2, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's December 28, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but did not establish that the claimant

committed a current act of work-connected misconduct. As of December 2, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll