

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY J MARQUEZ
Claimant

APPEAL NO. 08A-UI-10421-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC
Employer

OC: 10/05/08 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 27, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 20, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Gail Anderson participated in the hearing on behalf of the employer with a witness, Lori Smith.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a prep cook for the employer from May 11, 2004, to October 2, 2008. Her supervisor was the kitchen manager, Lori Smith. The claimant had received several warnings in 2007 for unsatisfactory work performance for failing to get all of her prep work done. On January 8, 2008, the claimant was warned about unsatisfactory work performance for failing to get all of her prep work done. On August 23, 2008, the claimant was warned about not preparing enough carving steaks and dinner rolls. She was suspended on September 12, 2008, after failing to get all of her prep work done on September 9 and 10. She was warned that she could be terminated if her performance did not improve.

The claimant worked the afternoon shift on October 2, 2008. She had a checklist of items to do for prep work. The checklist said she was to do "1CS" of dinner rolls, meaning one case. The claimant misread the list and believed it was asking for 10 trays, which she did. This would be about a half a case. There was spinach and bacon, and cabbage on the list but no amounts listed, which she understood meant that the items were not needed. She reviewed the list with the manager on duty because she wanted to make sure that it was okay to leave. The manager told her that she could leave.

Smith noticed on October 3, 2008, that claimant had not done all the dinner rolls or prepared the spinach, bacon, and diced cabbage.

Smith discharged the claimant on October 5, 2008, for unsatisfactory work performance for failing to get all of her prep work done.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated October 27, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs