

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JARED H CULLEN**  
Claimant

**APPEAL NO. 09A-UI-11778-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FT MADISON AREA RESTAURANT  
GROUP LLC**  
Employer

**OC: 07/05/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 12, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 1, 2009. Claimant participated. Employer participated by Howard Cook, kitchen/catering manager, and Breanne Helmers, waitress and bartender. The record consists of the testimony of Howard Cook; the testimony of Breanne Helmers; the testimony of Jared Cullen; and Employer's Exhibits 1-3.

**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 claimant was hired on March 6, 2009, as a part time cook. He was terminated on July 4, 2009, for insubordination. He was sent home by the manager on duty after he lost his temper with her and used a profane phrase, specifically telling her to mind her own "god-damned business." He had previously been warned for losing his temper and acting in an unprofessional manner on June 14, 2009. He was given a written warning and was told that further infraction would result in a written warning and a seven-day suspension.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts that constitute a material breach of the workers' duty to the employer. Insubordination, which is the continued failure to follow reason instructions, constitutes misconduct. Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statement is not present to hear them. The employer has the burden of proof on misconduct.

The evidence in this case showed that the claimant lost his temper on July 4, 2009, when he was asked why he was so slow and that an argument ensued between the claimant and the manager on duty. The claimant did use a profane phrase during that argument. Ms. Helmers, another employee, saw the manager and the claimant arguing, but she did not hear any profane language. The manager did not testify.

The claimant did use poor judgment in the way he handled his disagreements with the manager that night. He had lost his temper on a prior occasion and had been warned about that type of behavior. When all of the circumstances are considered, however, the administrative law judge concludes that misconduct has not been shown. Although the claimant was suspected of

drinking on the job and had brought some alcohol onto the premises, he testified that the beer was for a party after work. There was no evidence that the claimant was consuming alcohol while working. There is also no evidence of insubordination. The claimant was sent home after arguing with the manager. Although the claimant's behavior may have warranted termination, he is not disqualified from receiving unemployment insurance benefits. Benefits will be awarded if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated August 12, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, 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