

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL K HILL
Claimant

APPEAL NO. 14A-UI-02094-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEONARDOS PIZZA
Employer

OC: 01/26/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated February 14, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on March 18, 2014, by telephone conference call. The claimant participated personally. Employer participated by Thad Naso, owner. The record consists of the testimony of Thad Naso and the testimony of Crystal Hill.

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 Cedar Rapids, Iowa. The claimant was hired on September 20, 2013, as a full-time server and bartender. The claimant's last day of work was January 26, 2014.

The incident that led to the claimant's termination occurred on January 25, 2014. The claimant was scheduled to come to work at 5:00 and had been assigned to work the party room. At 4:00 a large group came in. The employer called the claimant and asked her if she wanted to come in early and she said no. Another server was assigned to assist the group. When the claimant came to work, she did not have any tables to work. Two other servers offered her tables but Mr. Naso, did not allow that. A disagreement arose between them that involved raised voices but no profanity. Mr. Naso considered the claimant to have been insubordinate and decided to terminate her.

Mr. Naso also took into account the claimant's actions on January 18, 2014, when he felt she was not smiling enough at customers and was rude upon occasion.

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 leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct 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 legal definition of misconduct excludes errors of judgment or discretion in isolated instances. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. There is insufficient evidence in this record to show insubordination. The claimant got upset about how tables were being assigned on January 25, 2014. Voices were raised. No profanity was used. The most reasonable inference from the evidence is that the claimant and Mr. Naso had an argument. There is scant evidence to show what the law regards as insubordination. The claimant at best used poor judgment in arguing with her employer. This is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated February 14, 2014, reference 01, is reversed
Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs