

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA KILBURN**  
Claimant

**APPEAL NO. 07A-UI-08089-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST FRANCHISE OF IOWA LLC**  
Employer

**OC: 07/22/07 R: 01  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Midwest Franchise of Iowa LLC (employer) appealed an unemployment insurance decision dated August 14, 2007, reference 01, which held that Patricia Kilburn (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 10, 2007. The claimant participated in the hearing with Attorney Jay Denne. The employer participated through owner Larry Miller. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time marina manager from March 2004 through July 21, 2007. She was discharged because the employer believed she had been drinking on the job. The claimant and the employer's brother had been having a relationship for several years and had broken up in December 2006. Approximately ten days before the separation, the employer's brother told him that the claimant had been drinking alcohol on the job and that it was an ongoing issue. The employer was out of town until July 21, 2007, and his brother told him the claimant had been drinking on the job the night before. The employer discharged the claimant, and she claims that he did not mention anything about drinking on the job but simply told her that it was not working out. The employer contends the claimant admitted at the fact-finding interview that she may have been drinking but claimed it was on break. At the appeal hearing, the claimant testified there was one time in which she got off work and was drinking but later returned to work since there were a lot of boats coming in. She did not plan on returning to work that night. The employer had never seen the claimant drinking on the job.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 substantial and 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 claimant was discharged for reportedly drinking on the job. She denies this allegation and the employer never witnessed this but relied on hearsay evidence from his brother. The claimant's brother did not participate in the hearing and it does appear that he would have personal reasons to want the claimant terminated. The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's

denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. Benefits are allowed.

**DECISION:**

The unemployment insurance decision dated August 14, 2007, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw