

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARLA MASSINA
Claimant

APPEAL NO: 13A-UI-06647-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOUSE OF AROMAS LLC
Employer

OC: 04/28/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 28, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on October 14, 2013. The claimant participated in the hearing. Larry Welcher, Co-Owner/Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time wait staff manager for House of Aromas from May 1, 2012 to April 28, 2013. She was discharged after the employer learned she was trying to organize other employees to file complaints of a hostile work environment.

On April 28, 2013, Co-Owner/Manager Larry Welcher learned the claimant was talking to other employees in an attempt to organize a complaint about the work environment at the restaurant as well as Mr. Welcher's treatment of employees. Mr. Welcher called the claimant to his table where he was eating lunch with a friend and asked her why there was a shortage of shmosas at the restaurant causing Cedar Falls customers to go to the employer's Cedar Rapids location. The claimant stated the Cedar Rapids restaurant did not send enough and Mr. Welcher said, "Bullshit. It's your fault." Mr. Welcher then asked the claimant about the rumors that the claimant and two other employees were going to sue him for creating a hostile work environment. The claimant asked him who told him that. Mr. Welcher stated another owner told him and asked if it was true and the claimant stated it was true. Mr. Welcher asked why and the claimant responded his erratic behavior needed to stop. Mr. Welcher told the claimant to, "Shut the fuck up" and came up out of the booth he was sitting in, yelling at the claimant and spitting food as the claimant backed away from him. Mr. Welcher told the claimant and the dishwasher to stop what they were doing because he was closing the restaurant as he could not "take this shit anymore." He told both employees to leave and the claimant walked out the front door. He

followed her and demanded she give him her keys. The claimant asked if he was terminating her employment and he said he was not but was going to conduct an investigation into her activities. The claimant extended her arm and dropped the keys in his hand but they fell to the ground as she said, "Fuck you." Mr. Welcher told her she was fired.

The employer also cited three incidents where he believed the claimant behaved erratically and inappropriately with customers. Mr. Welcher could not provide the dates of any of those incidents and the claimant did not receive any documented verbal or written warnings about her conduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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).

Mr. Welcher became very upset upon learning the claimant was talking to other employees about filing a complaint against him for creating a hostile work environment. While he testified he told her to leave so he could investigate, he was not planning to ask another owner to investigate whether employees thought he created a hostile work environment but rather to investigate whether the claimant was talking to other employees about filing a complaint against him. The claimant had the right to talk to other employees about the work environment and to ask each of them if they wanted to join her in filing a complaint against Mr. Welcher. Both parties behaved inappropriately April 28, 2013. However, Mr. Welcher's decision to terminate the claimant's employment, for simply asking other employees about their treatment by Mr. Welcher and whether they wanted to pursue a complaint against him for creating a hostile work environment, was not for good cause. The claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The May 28, 2013, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css