

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BERNARD WASHINGTON
Claimant

HOA HOTELS LLC
Employer

APPEAL 16A-UI-05119-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/27/16
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 27, 2016 (reference 01) unemployment insurance decision that denied benefits based upon his discharge for conduct no in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on May 16, 2016. The claimant, Bernard Washington, participated and testified. The employer, HOA Hotels LLC, participated through assistant general manager Michael Weldon.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a line cook from June 4, 2015 until this employment ended on March 8, 2016, when he was discharged.

On February 13, 2016, there was an incident involving claimant and another employee. Claimant had gotten very busy at work and was getting frustrated. Claimant got into an argument with another employee and then went to an area near the front desk to complain about the employee. Customers heard claimant's complaints and one reported hearing him use an expletive. Claimant then shut down the kitchen an hour and a half early against the request of management. Following this incident claimant received a written warning for unsatisfactory performance, discourtesy to a customer, and insubordination. When claimant was issued his written warning he was advised that further incidents would result in termination.

On March 3, 2016, claimant again became frustrated and upset while at work. The employer testified claimant's behavior was similar to the February 13 incident, though he did not shut the kitchen down, did not use any expletives, and no customers complained about his behavior. Claimant admitted he was likely rude to the other employee but denied in engaging in any of the other behavior he was accused of engaging in on February 13. Claimant was terminated, based on this incident, on March 8, 2016.

REASONING AND CONCLUSIONS OF LAW:

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

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application

of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The claimant was discharged for a situation in which he had a disagreement with and was rude to another employee. Claimant had been warned in February 2016, for an incident where he was rude to another employee, cursed in front of customers, and shut the kitchen down early for the night. None of the more serious behavior claimant displayed during the February incident occurred during the most recent situation that led to his termination. While claimant had been previously advised that further incidents may lead to termination, it is not reasonable to assume this warning put him on notice that any future disagreements with other employees, without more significant violations, would lead to termination. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

DECISION:

The April 27, 2016 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/can