

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY T DEDRICK
Claimant

APPEAL NO. 11A-UI-07454-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEAVER ENTERPRISES LTD
Employer

OC: 01/23/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 6, 2011, reference 02, that held he was discharged for misconduct on August 18, 2010, and benefits are denied. A telephone hearing was held on June 30, 2011. The claimant did not participate. Terry Moffitt, operations manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a part-time cook on March 18, 2010, and last worked for the employer on August 18, 2010. The claimant knew the employer had a no-smoking policy except in a designated area, as stated in the employee handbook.

On August 18, 2010, the restaurant owner observed claimant smoking at the front door of the restaurant and discarding the cigarette in a nearby landscaped area. The designated smoking area is an enclosed area by the dumpster. Claimant was discharged for violation of the no-smoking policy. The employer considers this a serious violation, as it was committed in an area observable by customers, which might discourage business.

Claimant failed to respond to the hearing notice.

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on August 18, 2010, for a violation of the company's no-smoking policy.

The claimant knew the employer's policy, which was communicated in the employee handbook, and his violation constitutes job-disqualifying misconduct. It is commonly known that a restaurant is in the food business and that employees smoking in an observable area might discourage business.

DECISION:

The department decision dated June 6, 2011, reference 02, is affirmed. The claimant was discharged for misconduct on August 18, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw