

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOROTHY K COFIELD
Claimant

APPEAL NO. 08A-UI-03709-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEW AGE RESTAURANTS
Employer

**OC: 03/16/08 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant, Dorothy Cofield, filed an appeal from a decision dated April 7, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 1, 2008. The claimant participated on her own behalf. The employer, New Age Restaurants, participated by Owner Cindy Abraham. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Dorothy Cofield was employed by New Age Restaurants from September 4, 2007 until March 11, 2008, as a part-time sandwich maker. She usually worked the day shift between 9:00 a.m. and 3:00 p.m. because she preferred to spend the evenings with her husband, who worked the night shift, although she worked nights from time to time as needed.

The claimant and her spouse were having personal problems and the employer allowed her to take several days off to resolve the situation. The spouse moved out of the home and moved in with a co-worker of the claimant's, Dan Brothel. This caused friction between the two employees and Ms. Cofield refused to work with Mr. Brothel. Manager Kathie McDonald then scheduled the claimant for the evening shift from 3:00 p.m. until 9:00 p.m. The claimant initialed the schedule, indicating she was willing to work those hours.

On March 11, 2008, she notified the manager she was not willing to work those hours after all. Ms. McDonald asked her for suggestions as to how to resolve the problem of Ms. Cofield not wanting to work with Mr. Brothel, who could only work days. The claimant had no suggestions and the manager then notified her that if she could not work the hours assigned, she was no longer needed.

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 claimant was discharged for refusing to do the work as assigned. It was her request not to work with the other employee and the manager accommodated that situation to the best of her ability. The claimant refused to accept the accommodation made for her and would not work her scheduled hours. Her initial reason of wanting to spend time with her husband in the evenings was no longer valid, as they no longer shared a domicile. She maintained her husband was "stalking" her by coming to the restaurant but did not provide any evidence of threatening or abusive behavior that had occurred in the workplace.

The refusal to perform her work duties as assigned is a violation of the duties and responsibilities the employer has the right to expect of an employee and is conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of April 7, 2008, reference 01, is affirmed. Dorothy Cofield is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw