

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSANNE M TWIT
Claimant

APPEAL NO: 07A-UI-03869-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRANGER SALOON LC
Employer

**OC: 03/18/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

Granger Saloon LC (employer) appealed a representative's April 9, 2007 decision (reference 01) that concluded Susanne M. Twit (claimant) was qualified to receive unemployment insurance benefits and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 30, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Chris Murphy, one of the owners, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 3, 2006. The claimant worked as a full-time manager of the employer's bar.

In mid-February, the claimant contacted Chris and complained about how messy the bar had been left by employees the night before. Chris then told the claimant about complaints employees and customers had made about her. The primary problem was that after the claimant finished working she stayed at the employer's facility as a customer and drank. Employees and customers complained that she was rude to them after she had been drinking. In mid-February, Chris told the claimant it was not acceptable for her to say, "I can do what ever I want to do." The employer warned the claimant she could not be rude to customers or tell employees what to do when she was off the clock.

The weekend of March 10, Jay Murphy, the other owner, went to the bar and talked to customers. Customers still complained about the claimant's rudeness. On March 12, the

claimant left messages for both Chris and Jay wanting to know why the bar had been left in such a mess and what the employer was going to do about it. Chris had been off work for the birth of a child and did not know what was going on. Chris understood Jay Murphy was on his way to talk to the claimant about the customer complaints he had recently learned about.

When Jay saw the claimant at work, she made a comment that she did not think he had the "guts" to talk to her. Instead of talking calmly about the problems at work, Jay and the claimant engaged in a heated argument. During the verbal confrontation, Jay asked for the claimant's keys and discharged her. Chris understood Jay discharged the claimant because the employer received too many customer complaints about her continued rudeness to customers.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant for business reasons. The evidence does not, however, establish that the claimant committed work-connected misconduct. Chris did not discharge the claimant and could only speculate as to why Jay discharged her on March 13. Since Jay did not participate at the hearing, the facts do not establish why he discharged the claimant or that she was discharged for committing work-connected misconduct. As of March 18, 2007, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's April 9, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the employer did not establish that the claimant committed work-connected misconduct. As of March 18, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs