

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEILA D FREESE
Claimant

APPEAL NO: 09A-UI-19145-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LARRY WHEATON
OWL'S NEST
Employer

OC: 11/22/09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated December 11, 2009, reference 01, that held the claimant was not discharged for misconduct on October 9, 2009, and benefits are allowed. A telephone hearing was held on January 29, 2010. The claimant participated. Larry Wheaton, Owner, participated for the employer. Claimant Exhibits A, B and C were received as evidence.

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 continued employment as a part-time bartender when Owner Wheaton acquired the business on December 23, 2002, and last worked on October 8, 2009. Wheaton discharged the claimant on October 9, because he believed the claimant had consumed beer the day before without paying for it. Wheaton did not give claimant an opportunity to explain that customer Henderson had bought two rounds for the house that covered the beer she consumed.

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 failed to establish that the claimant was discharged for misconduct in connection with employment on October 9, 2009.

During the hearing, the claimant offered a credible explanation that Owner Wheaton did not refute that customer Henderson paid for the beer she consumed on October 8. Since the claimant did not steal the beer, there is no evidence of misconduct.

DECISION:

The department decision dated December 11, 2009, reference 01, is affirmed. The claimant was not discharged for misconduct on October 9, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs