

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SHANDA L WISE
1530 AVE G APT 135
COUNCIL BLUFFS IA 51502

CRACKER BARREL OLD COUNTRY
STORE INC
c/o SHEAKLEY/UNISERVE INC
PO BOX 42212
CINCINNATI OH 45242-0212

Appeal Number: 05A-UI-01892-JT
OC: 01/02/05 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Cracker Barrel filed a timely appeal from the February 10, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 7, 2005, at the Council Bluffs Workforce Development Center. Shanda Wise was represented by John Wise and personally participated. The employer did not appear for the hearing and did not participate. Department Exhibits D-1 through D-5 and A were received into evidence.

FINDINGS OF FACT:

Shanda Wise was employed by Cracker Barrel as a part-time hostess from October 2003 until December 26, 2004, when Manager John Fritz discharged her for alleged misconduct.

The final incident that prompted the discharge allegedly occurred on December 26, 2004. The employer alleges that Ms. Wise was rude to coworkers and to patrons during her shift. The employer alleges that one or more patrons complained. The employer also alleges that Ms. Wise “slammed down menus and silverware” in front of guests when she needed to use the restroom. Ms. Wise was one of three hostesses working at the restaurant on the night in question. Ms. Wise was not rude to any patrons during the course of her shift and did not “slam down” menus or silverware in front of guests. On December 18, the employer had completed a written evaluation of Ms. Wise’s work performance, in which the employer indicated that Ms. Wise either met or exceeded the employer’s performance standards and assigned her an evaluation score of 92 percent.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Wise was discharged for misconduct in connection with his employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act to misconduct, a discharge her misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in the record fails to establish anything more than an uncorroborated allegation of misconduct. The employer failed to present any evidence at the hearing. Based on the evidence in the record and application of the law cited above, the administrative law judge concludes that Ms. Wise was discharged for no disqualifying reason and is eligible for benefits, provided she is otherwise eligible.

DECISION:

The Agency representative's decision dated February 10, 2005, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

jt/kjw