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

TONY L MEDINA
5127 COVENTRY CT
DAVENPORT IA 52807 3858

T & J INVESTMENTS LLC
LOS AMIGOS RESTAURANTE
2322 SPRUCE HILLS DR
BETTENDORF IA 52722

Appeal Number: 06A-UI-01770-DWT
OC: 01/22/06 R: 04
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

STATEMENT OF THE CASE:

Los Amigos Restaurante (employer) appealed a representative's February 8, 2006 decision (reference 01) that concluded Tony L. Medina (claimant) was qualified to receive unemployment insurance benefits, and the employer's account would be 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 March 2, 2006. The claimant participated in the hearing. Tom Losasso, the owner, 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 in 2000. The claimant worked at least 40 hours a week as a cook for the employer. During the summer of 2005, the employer told employees they could have one or two beers after they got done working or when they were cleaning up as long as they were of age.

During his employment, the claimant sometimes had a beer the last hour he worked or while he cleaned up. Losasso saw the claimant drink beer while cleaning up a number of times. The claimant usually had a beer when he cleaned up on Friday night.

On Friday, January 20, Losasso came to work around 5:15 p.m. He saw the claimant drinking from a cup. Losasso picked up the cup by the claimant's work station and threw it away. Although another employee had poured the beer for the claimant and the claimant had a pop he was drinking, the claimant was busy and did not say anything when Losasso told him not to drink beer at work.

Losasso came back to the kitchen between 9:15 and 9:30 p.m. that night. There were no customers in the restaurant and employees were cleaning up for the evening. The claimant was drinking a beer since he was cleaning and it was during the last hour of his shift. A 17-year old female employee was also drinking. When Losasso saw her drinking, he questioned the claimant as to who poured the female the drink. The claimant did not know who gave the female employee a beer and did not know she was drinking beer. Losasso sent all three employees home.

On January 22, 2006, the employer discharged the claimant for drinking on the job two times on January 20, 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §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 facts indicate the employer allowed employees, who were of age, to drink one or two beers at the end of work. The claimant understood he could have a beer while he cleaned up or during the last hour of his shift. Even though the employer asserted he had talked to the claimant prior to January 20, 2006, about drinking at work, the employer had no record of when he would have talked to the claimant or given him any warnings for drinking at work. Prior to January 20, the employer saw the claimant drinking while he was cleaning at the end of his shift and did not reprimand the claimant.

Taking the facts that are most favorable to the employer, assume the claimant had a drink of beer from a cup another employee poured him just before 5:15 p.m. When the employer saw the claimant between 9:15 and 9:30 p.m., the claimant was cleaning and understood he was allowed to have a beer at this time. The employer specifically indicated the fact an underage employee was drinking beer also, had nothing to do with the claimant's discharge. The employer, however, sent all three employees home. The employer discharged the claimant for drinking at work on January 20 for the second time.

Based on the employer's conclusions, the employer established a compelling business reason for discharging the claimant. The facts do not, however, establish the claimant violated the employer's no drinking policy on January 20, 2006. The second time the employer saw the claimant with a beer; the claimant understood he had the employer's permission to drink this beer. Therefore, the claimant did not intentionally and substantially disregard the standard of behavior the employer had a right to expect from the claimant. As of January 22, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 8, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of January 22, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc