

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC KING
Claimant

APPEAL NO: 09A-UI-10072-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TASOS 5 INC
Employer

OC: 06/07/09
Claimant: Appellant (1)

Iowa Code § 96.5-2-a - Discharge for Misconduct

STATEMENT OF THE CASE:

Eric King (claimant) appealed an unemployment insurance decision dated July 2, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Tasos 5, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 29, 2009. The claimant participated in the hearing. The employer participated through owner Christina Boosalis and Kari Swartz. 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:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time server from March 2009 through June 7, 2009 when he was discharged. He started his employment as a good employee and an excellent server but his performance changed during the last month of his employment. Employees were not allowed to trade schedules without management approval and this was due to the fact that there were strong servers and weak servers and the employer needed to be sure there was sufficient help at all times. The claimant's sister had been on maternity leave until the beginning of May 2009 but after she returned, she and the claimant repeatedly traded schedules without authorization. The employer warned the claimant about this on May 13, May 27 and June 3, 2009.

The claimant constantly asked for extra hours but then after he started working the extra shifts, he asked other employees to close for him. The other employees complained to the employer about the claimant trying to get off early. The claimant testified that he was kidding about it some of the time. Due to the claimant's attitude and performance, his hours were reduced. On the evening of June 5, 2009 he was complaining and using profanity about not getting enough

hours. The owner agreed to allow him to work on Sunday June 7, 2009. However, he was a no-call/no-show on June 7, 2009 and was discharged later that day.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 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 claimant was discharged on June 7, 2009 for repeatedly failing to work his scheduled shifts. He continued to change shifts with his sister without authorization, he bothered other employees to close for him when he was working and after complaining about not getting enough hours and being given another shift, he was a no-call/no-show. The claimant's actions show an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 2, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs