

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN L JACKSON
Claimant

APPEAL NO. 12A-UI-02432-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLAZIN WINGS INC
Employer

OC: 01-01-12
Claimant: Appellant (1)

Iowa Code §96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 7, 2012, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on April 10, 2012. The claimant did participate. The employer did participate through Bryant Arns, General Manager; Nick Bandemer, Bar Manager and was represented by Tom Kuiper of Talx UC Express. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a server part time beginning March 8, 2011 through August 27, 2011 when she was discharged. The claimant was being disciplined by Mr. Arns and Mr. Bandemer for a performance issue that occurred with one of her tables in the restaurant that evening. She was not going to be discharged, just disciplined. During the conversation the claimant used profanity when speaking to the managers. Eventually she began to refer to Mr. Bandemer and Mr. Arns as "you goddamn fucking managers" and Mr. Bandemer then ended the conversation and the claimant's employment. The claimant knew that she was not allowed to use profanity when speaking to or about management or coworkers.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It is not unreasonable for an employer to prohibit employees from swearing about them or to them. "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." This is ordinarily a fact question for the agency. *Myers v. Employment Appeal Board*, 462 N.W.2d 734 (Iowa App. 1990). The claimant used increasingly offensive language when speaking to her supervisors during a disciplinary meeting. The Administrative Law Judge is persuaded that the claimant did refer to both managers using profanity laced comments. Such action amounts to misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The March 7, 2012 (reference 03) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs