

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAVON M MEYERS
Claimant

APPEAL NO. 11A-UI-15361-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOWN HOLDINGS INC
Employer

**OC: 08/14/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated November 21, 2011, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 22, 2011. Claimant participated. Employer participated by Jody Bown, owner. Marilyn Nielsen; Deb Strochein; and Mike Bown were witnesses for the employer. The record consists of the testimony of Jody Bown; the testimony of Deb Strochein; the testimony of Marilyn Nielsen; the testimony of Mike Bown; and the testimony of Lavon Meyers.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a retail establishment located in Elkader, Iowa. The claimant was hired in 2009 as a part-time sales associate. The claimant's last day of work was on or about July 29, 2011. The claimant was terminated on October 1, 2011.

The events that led to the claimant's termination began on or about July 2, 2011. The employer's store adjoins another business called The Copper Frog. Jody Bown, the owner of The Buttery, leases space to The Copper Frog. The Copper Frog can be accessed by going down a few stairs and going in through a door. The Copper Frog is owned by Deb Strochein.

On July 2, 2011, at approximately 12:00 p.m., the claimant came down the steps from The Buttery into The Copper Frog. She told Ms. Strochein that she had a "bone to pick with her." The claimant was carrying a Bible. The claimant accused Ms. Strochein of spreading rumors about her around town and taking away customers of The Buttery. Ms. Strochein denied doing this and asked the claimant to please stop. The claimant put her hand on the Bible and began to say "in front of God." Ms. Strochein was upset and went into a foyer to call Ms. Bown.

Ms. Strochein heard a loud boom and discovered that the claimant had thrown the Bible against the wall. Ms. Strochein picked up the Bible and went into the Buttery. She told the claimant never to go into her store again.

On July 27, 2011, Ms. Strochein was very busy. A customer was picking up a china cupboard. The claimant came into the store and told Ms. Strochein that she had something else to say. Ms. Strochein called Ms. Bown again. Ms. Bown agreed to allow Ms. Strochein to close the doors between the two businesses. Later Ms. Strochein found out that the claimant had gone to other businesses in Elkader. She accused Ms. Strochein of having an affair and that she was going to make sure that The Copper Frog closed.

At the time this occurred, Ms. Bown was still living in Minnesota and planning a move to Iowa. She told the claimant not to go to work until she had time to sort this all out. The claimant agreed not to go to work. The move from Minnesota took much longer than Ms. Bown planned. The claimant kept contacting Ms. Bown and finally Ms. Bown decided that the claimant could not return to work. She was terminated on October 1, 2011.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant deliberately disobeyed an instruction from the employer. Ms. Bown told the claimant in early July 2011, that she was not to go into The Copper Frog due to her improper interactions with the owner of that business. The claimant went into the business again on July 27, 2011, with the intent of starting some sort of argument with Ms. Strochein, the owner of The Copper Frog. A reasonable inference from the evidence is that the claimant had a grudge or grievance against Ms. Strochein and wanted her business to close. Ms. Bown then decided to ask the claimant not to come to work until she could have a meeting and hear all sides of the story. The claimant knew that her job was in jeopardy. The meeting took longer than Ms. Bown planned and she decided that the claimant's actions were so damaging to her business that the claimant must be terminated. This termination occurred on October 1, 2011.

Although there was a period of time between the insubordination and the actual termination, the claimant knew she was being temporarily suspended from work due to the interactions she had had with Ms. Strochein. The administrative law judge concludes, therefore, that the claimant was terminated for a current act of misconduct. Her suspension or layoff was due to the alleged misconduct. Since the claimant was terminated for a current act of misconduct, benefits are denied.

DECISION:

The decision of the representative dated November 21, 2011, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs