

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA M WINEGAR**  
Claimant

**APPEAL NO. 14A-UI-00755-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHASER CORPORATION**  
Employer

**OC: 12/08/13**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated January 13, 2014, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on February 12, 2014. The claimant failed to respond to the hearing notice. A copy of the Clear2there hearing control sheet is enclosed with the file, which shows that the claimant did not call in. The employer participated by Brian Tressler, owner. The record consists of the testimony of Brian Tressler. Official notice is taken of agency records.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

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

The employer is a bar located in Waterloo, Iowa. The claimant was hired as a part-time bartender on March 17, 2013. She was terminated on March 17, 2013.

On March 17, 2013, the claimant came to the bar for a party that was being given by another employee. The claimant became intoxicated and started drinking drinks belonging to other guests. She was fighting with guests. She also announced that she had brought some weed to smoke and went out and used it in the parking lot. All of this was done in front of customers as well as guests of the party.

At the time of the hearing, no weekly claim for benefits has been filed by the claimant and there has not been an overpayment of benefits. The employer participated in the fact-finding interview.

## REASONING AND CONCLUSIONS OF LAW:

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.

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. The employer has the burden of proof to establish misconduct.

The claimant is not eligible for unemployment insurance benefits. She showed up at the employer's place of business on March 17, 2013, and got intoxicated; fought with guests; drank their drinks; and smoked marijuana. The bar is a small bar and what the claimant did was in front of guests and patrons, which would put the employer in a negative light. This is a breach of a material duty owed to the employer and constitutes misconduct. Benefits are denied. The overpayment issue is moot since no benefits have been paid to the claimant.

**DECISION:**

The decision of the representative dated January 13, 2014, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the 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.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs