

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELISSA R WOOD**  
Claimant

**APPEAL NO. 10A-UI-06671-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DLS MANAGEMENT CORP**  
Employer

**OC: 04/04/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated April 27, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 22, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Ashley Capps. Don Sheedy participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as restaurant manager from December 1, 2008, to April 2, 2010. She understood that employees were allowed a 50 percent discount on food on the day they worked and 20 percent outside a day they worked. She had received verbal warnings for unsatisfactory work performance on October 16 and December 16, 2009.

On January 22, 2010, Sheedy issued a final written warning to the claimant for spending three hours on New Year's Eve reservations without notifying the host about special instructions, mishandling the tasks for a banquet on January 19, and not doing her share of the work.

On March 31, 2010, the claimant rang up the lunch bills for three employees at the same table. She gave one employee a 20 percent discount, as she understood it was the employee's day off. She gave two employees a 50 percent discount, as she understood that both employees were working later that day. In fact, one of the employees was not on the schedule to work. The claimant did not deliberately violate the discount policy but was negligent in not checking the schedule to make sure both employees were scheduled to work.

Employees receiving discounts are required to sign the recipients, which they each did in this case. The claimant turned the receipts into Sheedy. He discovered the one employee who was

not entitled to the 50 percent discount. He believed the claimant had deliberately given the employee an unauthorized discount and discharged the claimant.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that she believed both employees were working the day she gave them 50 percent off their meals and that she understood the policy allowed employees to get 50 percent off as long as they worked on the day they received the discount.

While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law has been established. No willful and substantial misconduct has been proven in this case. No repeated negligence equaling willful misconduct in culpability has been shown.

**DECISION:**

The unemployment insurance decision dated April 27, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css