

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE EADS
Claimant

APPEAL NO. 07A-UI-03475-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CRACKER BARREL OLD
COUNTRY STORE INC**
Employer

**OC: 03/11/07 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Cracker Barrel, filed an appeal from a decision dated March 30, 2007, reference 04. The decision allowed benefits to the claimant, Danielle Eads. After due notice was issued a hearing was held by telephone conference call on April 19, 2007. The claimant participated on her own behalf. The employer participated by Associate Manager Eva McMeekan.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Danielle Eads was employed by Cracker Barrel from January 30, 2006 until March 14, 2007, as a part-time server. On November 24, 2006, a customer made a complaint to Jason, the manager on duty, regarding the claimant. She was asked to write up a statement which would be sent to the corporate office.

Nothing further was heard about the complaint until March 1, 2007, when General Manager Wes Hansen gave Ms. Eads a written warning about the complaint and he told her they could “put it behind them” and move forward. Two weeks later she was discharged on orders from the corporate office which had “reopened” the file.

The employer stated the corporate office wanted to be “thorough” in its investigation and talked to six witnesses. However, it was unable to establish why talking with six witnesses would take three months. It was also unable to explain why the claimant was given a final written warning as disciplinary action for the incident, then changed its mind and discharged her.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 record establishes that more than three months passed from the date the employer became aware of the complaint and the date the claimant was warned, and more time after that passed before she was discharged. The above Administrative Code section requires there to be a current, final act of misconduct and the administrative law judge cannot conclude that the passage of three and one-half months from date of incident to date of discharge constitutes a current act. The employer was not able to explain why the corporate office needed three

months to talk with six people, three of whom were still employed by Cracker Barrel, and why it issued a written warning and then revoked it to discharge Ms. Eads.

The record establishes the claimant was not fired for a current, final act of misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of March 30, 2007, reference 04, is affirmed. Danielle Eads is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs