

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER DAVIS
Claimant

APPEAL NO. 07A-UI-05466-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLAZIN WINGS INC
Employer

**OC: 04/15/07 R: 04
Claimant: Respondent (4)**

Iowa Code § 96.5(2)a - Discharge/Misconduct/Requalification

STATEMENT OF THE CASE:

Blazin Wings, Inc. (employer) appealed an unemployment insurance decision dated May 16, 2007, reference 03, which held that Amber Davis (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 16, 2007. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted and, therefore, did not participate. The employer participated through Julie Andrew, Regional Manager and Chris Scheibe, Employer Representative. Employer's Exhibits One through Four were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct, and if so, has she requalified for unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time bar manager from September 12, 2005 through April 28, 2006 when she was discharged for inappropriate conduct. She had been placed on a final warning on March 27, 2006 for similar problems. It was reported that she told an hourly team member that she could not wait until he quits so she could "fuck" him. On another occasion, she was overheard saying that a team member looked so sad that night that she would like to "pull his pants down and suck his dick." The employer investigated the matter and was advised that the claimant liked to joke around a lot. The claimant also frequently made negative comments such as, "I hate the food", "I don't get paid enough to do this", and "I hate my job." The employer met with the claimant and advised her to act appropriately and refrain from making unacceptable remarks.

The claimant was discharged after further incidents of inappropriate and unprofessional conduct. She was heard yelling at a team member in front of customers on April 27, 2007. Her

supervisor heard the claimant yelling even when the supervisor was behind a closed door. The claimant yelled, "That kid is so fucking stupid, he's a fucking idiot....." When counseled, the claimant stated that she did not get paid enough to "take this shit from high schoolers." The supervisor asked the claimant why she had not issued written warnings if the particular employee was so bad. The claimant then prepared a written warning and left before discussing anything more. On the following day, the claimant argued with the supervisor when she was told to go back out to work when found standing in the kitchen. Later, the claimant asked the supervisor to speak with the cashier because she was taking personal calls. The supervisor spoke with the cashier who admitted she had taken personal calls but told the caller she could not talk. She then complained that the claimant yelled at her in front of co-workers and customers and the cashier began to cry. The claimant was subsequently discharged due to repeated problems with her conduct.

Since her separation from Blazin Wings, the claimant has earned over four thousand dollars in wages and has requalified for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be determined is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 claimant was discharged for inappropriate and unprofessional conduct even after being warned. She was a manager and should have treated her subordinates with respect but was apparently unable or unwilling to do that. The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. However, the administrative law judge further concludes from information contained in the administrative record that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The unemployment insurance decision dated May 16, 2007, reference 03, is modified in favor of the appellant. The claimant was discharged from employment for reasons related to job misconduct, but has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css