

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA L WEST
Claimant

APPEAL NO. 07A-UI-08507-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HMDS INC - GRIZZLYS
Employer

**OC: 07/29/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated August 29, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice a telephone conference hearing was scheduled for and held on September 19, 2007. Ms. West participated personally. The employer participated by Kathey Rundell, Owner, and Kristen Kapolas, Bartender.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from April 2003 until July 28, 2007 when she was discharged from employment. Ms. West was employed as a full-time manager and was paid by salary. Her immediate supervisor was Kathey Rundell.

The claimant was discharged when the company owner believed that Ms. West had either allowed a worker that Ms. Rundell believed had been discharged to continue to work a shift after the discharge, or in the alternative, had failed to cover the vacant work shift. Earlier that afternoon it appears the male bar employee and the owner's husband, who has no management authority in the company, engaged in an exchange at the facility. Ms. West was not present at the time. Subsequently, Mr. Rundell, the owner's husband had indicated that the worker had been discharged. As Mr. Rundell had no management authority and the claimant was unsure of whether the worker had been discharged or not, Ms. West attempted to contact the worker by telephone and left a message. Hearing nothing further from the company owner nor from the worker, the claimant assumed that the matter could later be resolved and that the worker would report as scheduled. Subsequently the male worker called in indicating that he would report for work that evening. When Ms. Rundell, the owner, was informed, she prohibited the worker from working the shift and because there was no other replacement, worked the shift

herself. The employer believed that the claimant should have understood that the worker had been discharged and replaced the discharged worker herself for the evening shift. The employer's decision to terminate the claimant was "swayed" in some part by knowledge that Ms. West may have been seeking other employment.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant was discharged based upon the employer's assumption that the claimant was fully aware that an employee had been discharged and had not replaced the vacancy on the work shift herself. The evidence in this case, however, establishes that the claimant was not certain that the male worker had been discharged as she had not discharged the worker herself nor been informed by the company owner of that fact. The only indication that the claimant had that the worker was no longer employed was a statement made by the owner's husband who is not directly affiliated with the company and had no management authority. As the claimant perceived that the dispute between the parties was a personal one, she believed the matter would be resolved. The claimant left the worker a message and received no response; this led the claimant to believe that the worker would report as scheduled. When the worker indicated by telephone that he would be reporting, he was not allowed to do so by the company owner who then worked the shift herself. Ms. West was unaware that the shift was not covered.

The question before the administrative law judge in this case is not whether the employer has a right to discharge an employee for this reason, but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the employer's decision to terminate Ms. West may have been a sound decision from a management viewpoint, it is the opinion of the administrative law judge that any failure on the day in question was more in the nature of an isolated instance of poor judgment and not because of intentional disqualifying misconduct.

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.

For the reasons stated herein, the administrative law judge finds the claimant's separation to be non disqualifying.

DECISION:

The representative's decision dated August 29, 2007, reference 01, is hereby affirmed. The claimant was dismissed under non disqualifying conditions. Benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs