

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ALYSSA M FORD**  
Claimant

**G M R I INC**  
Employer

**APPEAL 21A-UI-16224-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/11/21**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview  
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

**STATEMENT OF THE CASE:**

The employer/appellant, G M R I Inc., filed an appeal from the July 7, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 9, 2021. The claimant, Alyssa M. Ford, did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Barbara Buss, hearing representative. Jesse Jordan, manager, testified. Employer Exhibit 1 was admitted..

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer’s account be waived?  
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer operates as an Olive Garden restaurant. The claimant was employed part-time as a server and was separated from employment on April 12, 2021, when she was discharged for serving a minor alcohol.

Claimant was trained on employer's rules and procedures, which explicitly cover serving alcohol and that serving a minor will result in immediate discharge. Claimant also participated in addition training and classes on serving alcohol, including one by the state of Iowa.

In addition, employer has several safeguards in place to distinguish alcoholic versus non-alcoholic beverages. Servers ring up alcohol beverages under a certain screen menu and non-alcohol drinks on a separate menu. The alcoholic versus non-alcoholic drinks are served in separate "lanes" at the bar, and different kinds of glasses, and straws are used to help differentiate an alcoholic versus non-alcoholic drink.

Claimant in this case was discharged for a single event , which she self-reported. On April 10, 2021, a mother and teen daughter ordered drinks. The mother ordered a margarita with alcohol and daughter ordered a non-alcoholic margarita. When claimant rang up the orders, she did not use the two separate menus, but rather rang both under the alcoholic menu, with a note that one drink was to be made without alcohol. Due to the screen error, the bartender misread the ticket and made two alcoholic margaritas, placing both in the alcohol lane, with straws and cups representing both contained alcohol. Had claimant properly rung up the order or checked the order, she should have picked up drinks in two separate lanes, in two different glasses, with two different straws. Instead, she picked up two identical drinks and served them to the mother and daughter before realizing she had served a minor alcohol. By serving the minor alcohol, claimant violated Iowa law. She was subsequently discharged.

The administrative record reflects that claimant has not received unemployment benefits or FPUC benefits since filing her claim for benefits effective April 11, 2021. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Employer did not participate because it did not receive a notice of interview.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In this case, claimant was trained on employer's rules and procedures regarding serving alcohol. Employer also utilized at least 4 different steps/safeguards (menu for ringing up, lane the drink was served in, glassware used and straw used) to help prevent a minor or someone from being served an alcoholic drink in error. The claimant knew that she was obligated to follow the steps outlined in employer's training. She had been trained and certified that she knew how to correctly serve alcohol. The claimant knew or should have known that breaking Iowa law by serving alcohol to a minor was conduct not in the employer's best interest and violated state law. Even though this was the first instance, the claimant's serving alcohol to a minor is substantial work connected misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

Because the claimant's separation was disqualifying, benefits were originally allowed. However, she did not receive any benefits and therefore there is no overpayment in accordance with Iowa Code § 96.3(7). The administrative law judge further concludes the employer did not satisfactorily participate in the fact-finding interview pursuant to Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. However, the lack of participation was due to lack of notice. Therefore, if claimant is later allowed benefits, this employer's account shall not be charged.

**DECISION:**

The July 7, 2021 (Reference 01) initial decision is REVERSED. The claimant was discharged for disqualifying job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



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Jennifer L. Beckman  
Administrative Law Judge

September 16, 2021  
Decision Dated and Mailed