

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHILLIP B WILSON**  
Claimant

**CBOCS INC**  
Employer

**APPEAL NO: 12A-UI-10068-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/15/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated August 13, 2012, reference 01, that held he was discharged for misconduct on July 14, 2012, and benefits are denied. A telephone hearing was held on September 12, 2012. The claimant did not participate. Terry Stonehocker, GM, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a part-time cook on April 13, 2011, and last worked for the employer as a server on July 14, 2012. The claimant received an employee handbook that contained the policies of the employer. The claimant was issued counseling reports about workplace issues to correct behavior.

The employer issued a written warning report to claimant on June 20, 2012 for disrespectful behavior to a shift leader. He told the leader she needed to go to management school. He was advised a further incident could lead to employment termination. He was issued a written warning for a policy violation of failing to use two servers at an eight-customer table on July 3.

The employer received a report from a server who was in tears that claimant told her she was too old to get to her tables. The GM confirmed the statement from another person who heard it. The GM discharged claimant for this behavior in light of prior discipline.

Claimant failed to respond to the hearing notice.

**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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on July 14, 2012, for repeated violations of company policy and unprofessional behavior.

The claimant knew the employer policy and required behavior due to prior warnings and his repeated disrespectful behavior for the same offense constitutes job disqualifying misconduct.

**DECISION:**

The department decision dated August 13, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on July 14, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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