

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICOLE M KLUESNER**  
Claimant

**APPEAL NO. 06A-UI-11514-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GMRI INC**  
Employer

**OC: 10/29/06 R: 04  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

GMRI, Inc. filed an appeal from a representative's decision dated November 21, 2006, reference 01, which held that no disqualification would be imposed regarding Nicole Kluesner's separation from employment. After due notice was issued, a hearing was held by telephone on December 18, 2006. Ms. Kluesner participated personally. The employer participated by Mike Bries, Culinary Manager. Exhibits One and Two were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Kluesner was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Kluesner began working for GMRI, Inc., doing business as Olive Garden, on January 7, 2002. She worked from 30 to 40 hours each week bartending, serving, and preparing salads. She was discharged after a verbal altercation with a coworker.

On October 27, 2006, Ms. Kluesner and a coworker, Tammy Stribling, had a disagreement while in the kitchen. Ms. Stribling told Ms. Kluesner she was the "whiniest bitch" she had ever met, referring to her complaining. Ms. Stribling proceeded to the dining room area and was standing in a hallway talking to two coworkers. She was talking about the conversation she had just had with Ms. Kluesner. Ms. Kluesner could overhear her and came around the corner, pushing past another employee, Jen. Ms. Kluesner told Ms. Stribling that, if she had something to say, to say it to her "fucking" face. There was no physical contact between the two. It is unclear as to whether any customers overheard the exchange. Ms. Stribling followed Ms. Kluesner into the kitchen where the two again exchanged words. Both parties were discharged as a result of the incident.

**REASONING AND CONCLUSIONS OF LAW:**

Ms. Kluesner was discharged from Olive Garden. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Kluesner's discharge was prompted by a verbal altercation with a coworker during which she used the word "fucking." The evidence failed to establish to the satisfaction of the administrative law judge that the profanity was overheard by customers. The employer's only written statement presented as evidence was that of Ms. Stribling. She indicated she did not know if the exchange was overheard by customers. According to Ms. Kluesner, she did not believe customers heard her. This might be a different matter if the profanity was overheard by customers.

Inasmuch as there was no evidence that Ms. Kluesner's profanity was overheard by customers, the administrative law judge is inclined to view her conduct as an isolated, "hot-headed" incident. She used poor judgment in confronting Ms. Stribling rather than taking her concerns to a manager. It is unreasonable to expect employees to be docile and well-mannered at all times. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated November 21, 2006, reference 01, is hereby affirmed. Ms. Kluesner was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css