

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA R O'CONNELL
Claimant

APPEAL NO. 08A-UI-02288-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES LLC
Employer

**OC: 02/03/08 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Laura R. O'Connell (claimant) appealed a representative's March 3, 2008 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of IOC Services LLC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 24, 2008. The claimant did not respond to the hearing notice or participate in the hearing. Chelley Pratt, the human resource director, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 19, 2007. The claimant worked as a full-time security guard. The employer gave the claimant a copy of various policies. One policy informed employees that they could not participate in or appear to participate in any employer-sponsored promotion.

On February 2, 2008, a surveillance camera showed the claimant with a male guest at the counter where guests could sign up and receive promotional material from the employer. The claimant was at work but was not on duty. The surveillance showed that after the claimant helped the male guest, the claimant put two tickets for a free buffet in her pocket.

After reviewing the surveillance tape, the claimant's supervisor talked to the claimant about the incident. The claimant reported that the male guest was her boyfriend and she was helping him enter a promotion when she was off-duty. The claimant admitted she put buffet coupons in her pocket, but explained that she did this for her boyfriend. There is no evidence the buffet coupons were ever used.

Although the claimant's employment was not in jeopardy prior to February 2, the employer discharged the claimant on February 3, 2008. The employer concluded the claimant's conduct on

February 2 violated the employer's policy because it appeared as though she participated in a promotion, which violated the employer's policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally or even substantially disregarded the employer's interests on February 2, 2008. The claimant may have used poor judgment when she helped her boyfriend enter a promotion and placed two buffet coupons in her pocket, but the facts do not establish that she knowingly violated the employer's policy. The claimant did not commit work-connected misconduct. As of February 3, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's March 3, 2008 decision (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit a current act of work-connected misconduct. As of February 3, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw