

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOAN A WALTON
Claimant

APPEAL NO. 07A-UI-08372-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GMRI INC
Employer

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

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Joan Walton filed an appeal from a representative's decision dated August 22, 2007, reference 01, which denied benefits based upon her separation from GMRI Inc. After due notice was issued, a hearing was held by telephone on September 17, 2007. Ms. Walton participated personally. The employer participated by Darin Wilson, Culinary Manager. Exhibits One through Four were received into evidence.

ISSUE:

At issue in this matter is whether Ms. Walton 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 was employed from June 16, 2004 until July 26, 2007. Ms. Walton held the position of full-time server.

The claimant was discharged following an incident that occurred on July 25, 2007. At that time the claimant observed a company hostess seating patrons in a table area indicating to the patrons that the booths were "dirty." Ms. Walton was aware of one booth that was clean and directed the customers to relocate to the booth as they had indicated a preference for booth seating. When the hostess inquired as to whether the claimant would be serving the guests, Ms. Walton replied in the affirmation saying to the hostess, "You are dumb." A decision was made to terminate Ms. Walton from her employment after the hostess complained about the claimant's conduct. Ms. Walton had been previously warned for the same conduct in the past and was aware that disrespecting or failing to show compatibility with other workers was a violation of company policy and could result in her discharge from employment. Based upon the repetitive nature of the claimant's violation of the company's compatibility expectations, the decision was made to terminate Ms. Walton from her employment.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. The record in this case establishes that Ms. Walton had been warned on at least one previous occasion for the same conduct. Claimant previously made a disrespectful statement to another employee and had been warned at that time and was aware that continuing violation of the company rule could result in her termination from employment. During the most recent incident the claimant disagreed with the hostess's seating decision and chose to reseat patrons into the claimant's work area. When the hostess confirmed that Ms. Walton would be seating the guests, the claimant called the hostess "dumb." The employer's expectation that hourly employees would bring areas of dissatisfaction to management to resolution is reasonable and the claimant is aware of the company policy that requires employees to refrain from conduct that comprises compatibility among or between employees.

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 that the claimant's separation was disqualifying. Benefits are withheld.

DECISION:

The representative's decision dated August 22, 2007, reference 01, is hereby affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the

claimant's weekly benefit amount, providing that the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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