

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**ERIK D SYHRE  
2130 WATERLOO RD  
CEDAR FALLS IA 50613**

**BJS PROPERTIES INC  
D/B/A PUMP HAUS PUB AND GRILLE  
PO BOX 969  
CEDAR FALLS IA 50613**

**Appeal Number: 04A-UI-03425-RT  
OC: 02-15-04 R: 03  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Erik D. Syhre, filed a timely appeal from an unemployment insurance decision dated March 16, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on April 19, 2004, with the claimant not participating. Although the claimant had called in a telephone number in advance of the hearing where he purportedly could be reached for the hearing, when the administrative law judge called that number at 10:01 a.m. the administrative law judge reached the voice mail for an "Erik." The administrative law judge left a message that he was going to proceed with the hearing and if the claimant wanted to participate he needed to call before the hearing was over and the record was closed. The hearing began when the record was opened at 10:05 a.m. and ended when the record was closed at 10:14 a.m. and the claimant had not called during that period of time. The claimant had a witness but the administrative law judge did not call the

witness inasmuch as the claimant was not participating in the hearing. Johna Petersen, Owner/Operator, participated in the hearing for the employer, BJS Properties, Inc., doing business as Pump Haus Pub and Grille.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time kitchen supervisor from July 4, 2003 until he was discharged on February 19, 2004 for insubordination. A few days immediately prior to February 14, 2004, the claimant was out sick. The manager called the claimant in regards to whether the claimant had ordered supplies for an upcoming party. The claimant told the manager that he had already ordered the supplies and then got upset and hung up on the manager. Later, the employer learned that the claimant had not ordered the supplies. The claimant was then discharged. Previously, the claimant had been suspended for his attitude because he yelled at co-workers and he had a lack of respect for management. The claimant had also received a written warning on September 8, 2003 for the same reason.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Johna Petersen, Owner/Operator, credibly testified that the claimant was discharged for insubordination. She testified that after a written warning on September 8, 2003, for his attitude, including yelling at co-workers and a lack of respect for management, the claimant was suspended for the same reason and, then just a few days prior to February 14, 2004 when the claimant was called by the manager to see if he had ordered supplies for a party, the claimant said that he had when in fact he had not and then got upset and hung up on the manager. The claimant was then discharged. It is true that the claimant may have been home ill, but the employer had a legitimate reason in calling the claimant and the claimant should not have become upset and hung up. Because of the claimant's warning and suspension for his attitude previously and then the actions giving rise or triggering his discharge, the administrative law judge concludes the claimant's acts constitute a material breach of his duties and obligations arising out of his workers' contract of employment and evince a willful or wanton disregard of the employer's interest and are at the very least, carelessness or negligence of such a degree of recurrence, all as to establish disqualifying misconduct. Accordingly, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of March 16, 2004, reference 01, is affirmed. The claimant, Erik D. Syhre, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

dj/b