

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

HEATHER J THOMPSON
Claimant

APPEAL NO. 18A-UI-11457-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BASS PRO OUTDOOR WORLD LLC
BASS PRO SHOPS OUTDOOR WORLD**
Employer

**OC: 03/04/18
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Bass Pro Outdoor World (employer) appealed a representative's November 15, 2018, decision (reference 04) that concluded Heather Thompson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 14, 2018. The claimant participated personally. The employer participated by Kyle Holdorf, General Manager of Uncle Bucks Fish Bowl and Grill, and Nikki Nelson-Roller, Human Resources Coordinator. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 18, 2018, as a full-time restaurant manager. She signed for receipt of the employer's policies on April 19, 2018. The employer has an open door policy regarding concerns from employees. The employer did not issue the claimant any warnings during her employment.

The claimant's did not feel supported by her co-workers. She was the only female member of management. The claimant's direct supervisor showed the claimant that Managers Brad and Justin had made disparaging comments about the claimant's work on FaceBook. She felt Manager Brad thought she was incapable of working in the kitchen because she was female. The employer sent the claimant to a regional retreat in October 2018. At the retreat she talked with her regional manager who was the site's former general manager. He instructed the claimant to have a discussion with her management team about Managers Brad and Justin not being respectful to the claimant.

She returned to work and told her direct supervisor about the regional manager's instructions. The regional manager permitted the claimant to discuss the topic at the October 12, 2018, management meeting. On October 12, 2018, she said that Managers Brad and Justin were being disrespectful and did not have her back. She voiced her opinion that Manager Justin was not committed to the employer because he did not step up and cover shifts. No one yelled but the discussion became heated. The direct supervisor listened to the discussion. Then he said that it was not productive and it needed to end.

Before the claimant left for the retreat, she asked her co-workers to save the empty wine boxes so that empty bottles could be placed in them. On October 13, 2018, the claimant noticed the boxes had not been saved. In a loud voice so her co-workers could hear across the room and over the fans, she asked who put the wine away. When no one admitted doing it, she checked the records and deduced that Manager Justin put the wine away and then thrown the boxes away. The direct supervisor inferred that the claimant thought he was stupid because the boxes were not saved.

On October 19, 2018, the direct supervisor terminated the claimant for making "comments that were inappropriate and unprofessional regarding the performance and ability of another manager and lead" on October 12, 2018. She was also terminated for criticizing her direct supervisor's actions and abilities regarding wine storage on October 13, 2018.

The claimant filed for unemployment insurance benefits with an effective date of March 4, 2018. The employer participated personally at the fact finding interview on November 14, 2018, by Kyle Holdoff, Jason Thurman, and Michelle Hobbs.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant's and the employer's testimony is not the same. The administrative law judge finds the claimant's testimony to be more credible because she was an eye witness to the events for which she was terminated. The employer's witness was unsure of dates and events. His testimony was internally inconsistent.

DECISION:

The representative's November 15, 2018, decision (reference 04) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs