

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLE E CLAPP
Claimant

APPEAL NO. 09A-UI-07600-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BISTROS AND MORE INC
OLD CHICAGO**
Employer

OC: 04/12/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Nichole Clapp, filed an appeal from a decision dated May 11, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 10, 2009. The claimant participated on her own behalf. The employer, Old Chicago, participated by General Manager Correy Kewatt.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Nicole Clapp was employed by Old Chicago from April 20, 2006 until March 15, 2009 as a part-time cocktail waitress and bartender working an average of 20 hours per week. On March 14, 2009, the claimant was working and used the identification code of an assistant manager, Kayla, to “comp” food for a friend of hers. This is a deduction from the total cost of the food. Such “comps” require the permission of a manager who either does the transaction personally or gives the server permission to use their code and ring up the ticket themselves.

The daily report was run by General Manager Correy Kewatt the next day and he discovered the use of Kayla’s code for two of Ms. Clapp’s tickets. The tickets had been run at 6:09 p.m. and 6:50 p.m. and Kayla had left the restaurant at 4:00 p.m. Mr. Kewatt checked with Kayla who stated she had not given the claimant any authorization to use her manager code the night before. The claimant knew the code from having it given to her in the past from other managers, but the code had previously been used only with the manager’s knowledge and permission.

The company handbook states it is grounds for immediate discharge if an employee misappropriates money or food.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant was discharged for using a manager's code to reduce the cost of a friend's meal ticket, without permission from the manager. She does not deny this. Her defense rests largely on unfounded assertions the management was aware of other employees who used a manager's code without permission and no one other than herself was fired. Ms. Clapp was unable to give any evidence to support this contention.

In addition, she maintained an argument she had with the general manager the week before was the real reason she was discharged. The only real effect that argument had on her discharge was her refusal to talk to Mr. Kewatt on March 14, 2009, to get permission to comp her friend's meal. She took it upon herself to use a manager's code without permission and take money of the bill for her friend. This is a violation of a known company rules as well as the duties and responsibilities the employer has the right to expect of an employee. It is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of May 11, 2009, reference 01, is affirmed. Nichole Clapp is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs