

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEXANDER J ARMITAGE
Claimant

APPEAL NO: 13A-UI-12417-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARANTHIE INC
Employer

OC: 10/06/13
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 96.3-7a,b – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated October 30, 2013. reference 01, that held the claimant was not discharged for misconduct on October 9, 2013, and benefits are allowed. A telephone hearing was held on November 27, 2013. The claimant participated. Ocke Satrio, Owner, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant was hired on November 7, 2012, and last worked for the employer as a part-time waiter on October 9, 2013. He averaged about 18 – 20 weekly work hours. The employer does not have written employee policies but it gives instructions on what work to do.

In addition to waiting on customer tables, claimant had clean-up work duties. He was instructed to complete his clean-up duties prior to leaving. An employer manager texted claimant he needed to return to the restaurant after he left on September 29 because he failed to complete his cleaning duties. Claimant did return and worked as instructed. The employer owner issued claimant a verbal warning he would be fired if he did not improve his work performance within the next week.

Claimant went to local police on October 3 with a report the employer owner was sexually harassing him. He did not want to file a criminal complaint.

On October 6 claimant left work without completing his cleaning duty. When he reported to work on October 9 the owner terminated him for failing to perform his work duties. Claimant

went to local law enforcement with a complaint. Later in the day local law enforcement questioned the owner about claimant's complaint. No charge was filed.

Claimant has received seven weeks of benefits totaling \$609.00 through the week ending November 23, 2013.

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 administrative law judge concludes employer has established claimant was discharged for misconduct in connection with employment on October 9, 2013 for repeated failure to perform job duties as instructed.

Claimant admitted in this hearing he received a verbal warning he would be fired for failing to perform his job duties. He admits he returned to the restaurant when requested by the employer to complete his duty on September 29 that is an admission he failed to perform as instructed. His repeated failure to perform his job duty on October 6 constitutes job disqualifying misconduct in light of the recent warning.

Claimant's complaint about employer harassment is unfounded due to him continuing employment prior to termination, and lack of any criminal charge. There is no nexus between this complaint and the reason employed terminated claimant.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

The administrative law judge further concludes claimant is overpaid unemployment benefits during a seven-week period ending November 23, 2013 totaling \$609.00. The employer provided written information to department fact finding about the employment separation. The issue whether claimant is required to repay the overpayment and the employer participation is remanded to Claims.

DECISION:

The department decision dated October 30, 2013, reference 01, is reversed. The claimant was discharged for misconduct on October 9, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid benefits \$609.00, but the issue whether he is required to repay it and employer fact finding participation is remanded to Claims.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css