

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES F BROWN
Claimant

APPEAL NO. 08A-UI-04660-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRE MOUNTAIN RESTAURANTS INC
Employer

**OC: 04/13/08 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Charles F. Brown (claimant) appealed a representative's May 8, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Fire Mountain Restaurants, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on May 30, 2008. The claimant participated in the hearing. Nico McQuist appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 27, 2006. He worked part time (approximately 16 hours per week) as a cook and kitchen worker in the employer's Clive, Iowa, restaurant. His last day of work was February 16, 2008. The employer discharged him on that date. The stated reason for the discharge was coming to work while under the influence of alcohol.

Prior to February 16 the employer had been aware of the claimant having a problem with alcohol and had given him prior counseling and discipline for coming to work under the influence, including a suspension in the fall of 2007 where his return to work was conditioned on his completing a treatment program. On February 16, the claimant drove to work but was so intoxicated that he fell in the parking lot and tried to use a storage area door to enter the kitchen. When confronted, the claimant admitted that he was under the influence. The employer then told him that he could not work that day and was being discharged. At the time of discharge the employer left open the possibility that the claimant might be able to be rehired if he successfully completed additional treatment; at the time of the hearing the employer remained willing to consider the possibility of rehiring the claimant, but was not at that time satisfied that the claimant in fact had satisfactorily completed treatment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's coming to work under the influence of alcohol particularly after prior warning shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct. Whether or not the claimant subsequently completed additional treatment does not alter the fact of the disqualification due to the discharge.

DECISION:

The representative's May 8, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 16, 2008. This disqualification continues until

the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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