

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IKHLAS H FAS
Claimant

HARVEYS IOWA MANAGEMENT CO INC
Employer

APPEAL 20A-UI-02930-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/01/20
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Ikhlas Fas (claimant) appealed a representative's March 31, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Harveys Iowa Management (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 4, 2020. The claimant participated personally. Interpreter Hassan, number 12322, aided the claimant in her testimony. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

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 in March 2017, as a full-time server. She signed for receipt of the employer's handbook when she was hired. The employer did not issue her any warnings.

On March 1, 2020, the claimant waited on a table and was concerned that the customers did not have player cards. A player card would allow them to have a free drink. The female customer admitted she did not have a player card. The male customer said he had a player card. The claimant did not think the male customer was truthful. The claimant consulted her supervisor and the supervisor said the male patron had a player card. The claimant charged the female patron for her drink and did not charge the male patron for his drink.

Later, the claimant discovered the male customer did not have a player card. The claimant paid the bartender for the \$5.00 drink with cash from her own money. She then collected the \$5.00 from the male patron. The claimant kept the \$5.00 from the male customer. This was standard operating practice.

On March 5, 2020, the claimant's next scheduled day of work, the employer suspended the claimant for taking \$5.00. On March 6, 2020, the employer terminated the claimant for taking \$5.00. On March 5 and 6, 2020, the claimant asked to view proof of the employer's allegations. The employer refused.

The claimant filed for unemployment insurance benefits with an effective date of March 1, 2020, and received state unemployment insurance benefits after the separation from employment. She also received federal pandemic unemployment compensation.

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).

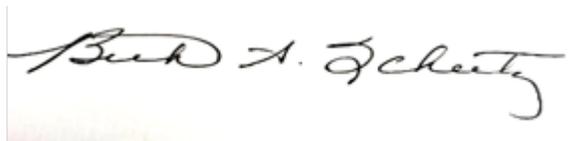
Iowa Admin. Code r. 871-24.32(4) provides:

(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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct or misappropriation of funds. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's March 31, 2020, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

May 5, 2020
Decision Dated and Mailed

bas/scn