

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GILBERT TORRES**  
Claimant

**APPEAL NO: 07A-UI-02423-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RED ROBIN INTERNATIONAL INC**  
Employer

**OC: 02-04-07 R: 01  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 27, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 29, 2007. The claimant participated in the hearing. Dennis Wilke, Assistant General Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time bartender for Red Robin Gourmet Burgers from April 2006 to February 11, 2007. On February 6, 2007, the claimant arrived for work and was upset because the employer made some changes in the bar during his days off and he questioned why things had been moved and some policies changed. The general manager was upset because an employee failed to show up and when the claimant continued to complain about the changes in the bar the general manager told him to “shut the fuck up and go home. We don’t need this today.” The claimant did not report for work February 7, 8, 9 or 10, 2007, and believed if the employer wanted him to return to work it would call him. After not hearing from the employer the claimant believed his employment had been terminated and filed for unemployment insurance benefits.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the employer contends the claimant quit by failing to report for work after February 6, 2007, the claimant believed his employment was terminated when he was sent home and the employer did not contact him again. Although it would have been prudent for the claimant to at least call the employer to find out about his job status, it was not unreasonable for him to believe he had been fired under the circumstances of being sent home. Consequently, the administrative law judge concludes the claimant was discharged from his employment and the employer has not demonstrated that his actions rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The February 27, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/pjs