

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUBREY M GRADERT
Claimant

APPEAL NO: 12A-UI-10515-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOTS LLC / TAVERN ON THE SQUARE
Employer

OC: 07/22/12

Claimant: Respondent (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

TOTS L.L.C. / Tavern on the Square (employer) appealed a representative's August 20, 2012 decision (reference 01) that concluded Aubrey M. Gradert (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 25, 2012. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Nicole Reynolds appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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?

OUTCOME:

Reversed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on January 12, 2012. She worked part time (25 - 30 hours per week) as a bartender. Her last day of work was July 25, 2012. The employer discharged her on that date. The stated reason for the discharge was taking excessive breaks and serving and drinking alcohol while on duty with a customer who had been banned.

On or about July 15 the employer had given the claimant a verbal warning that it was receiving too many customer complaints about not receiving service because the claimant was taking excessively long breaks. On or about July 25 the employer received some additional customer complaints that the claimant was not serving them in a timely manner because she was taking excessively long breaks. Also on July 25 the employer learned that on July 20 the claimant had served a drink to and had while on duty consumed an alcoholic beverage with a customer the claimant knew had just recently been banned from entering the employer's facility for 20 days

because she had thrown a glass at another bartender. The employer had informed all employees, and specifically had informed the claimant that if anyone served this banned customer the employee would be discharged. As a result of these further issues coming to the employer's attention on July 25, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective July 22, 2012. The claimant has received no unemployment insurance benefits since the separation from employment.

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 intentional serving of a drink to a customer she knew had been banned, as well as consuming alcohol while on duty herself and taking excessive breaks 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.

DECISION:

The representative's August 20, 2012 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 25, 2012. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css