

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL S NELSON
Claimant

WALNUT BREWERY INC
Employer

APPEAL 18A-UI-03688-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/23/17
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 12, 2018, (reference 06) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for performing unsatisfactory work and he was capable of performing work to the employer's satisfaction. The parties were properly notified of the hearing. A telephone hearing was held on April 17, 2018. The claimant, Michael S. Nelson, participated and was represented by Dave Nagle, Attorney at Law. The employer, Walnut Brewery, Inc., did not register a telephone number at which to be reached and did not participate in the hearing.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as an executive chef, from August 2017 until January 23, 2018, when he was discharged. On Monday, **January 15, 2018**, claimant called in sick. He contacted the general manager as soon as he could that morning to report that he was throwing up and could not come to work. Claimant returned to work the next day and finished out his week. Claimant was told at some point that he needed to either take an unpaid day or make up the day that he missed due to illness. Claimant was working six days per week at the time, so he opted to take an unpaid day. Claimant was never instructed that he needed to bring in a doctor's note to cover the absence.

On Tuesday, January 23, claimant was told that he was being discharged. He was given several reasons for this separation. First, the employer told claimant he was discharged for failing to bring in a doctor's note to cover his absence from January 15, 2018. Second, claimant was told that he was discharged for performance concerns. Specifically, claimant failed to complete line checks and failed to keep an accurate inventory. Claimant had never been warned for these or any other performance concerns. Claimant was not aware that his job was in jeopardy for any reason.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

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 the 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.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case, the employer did not participate in the hearing and it did not submit any documentation in lieu of in-person participation. The employer has not met its burden of establishing that claimant was discharged from employment for disqualifying misconduct. Therefore, benefits are allowed.

DECISION:

The March 12, 2018, (reference 06) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn