IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANDREA R BRADLEY
Claimant

FRONTIER MGMT CORP
Employer

APPEAL NO. 08A-UI-08365-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/17/08 R: 04
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Frontier Management Corporation (employer) appealed a representative's September 10, 2008 decision (reference 01) that concluded Andrea R. Bradley (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 6, 2008. The claimant participated in the hearing. Angela Hill, Jamie Bohmer and Julie Witt 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 6, 2006. She worked as part-time hostess and server. Bohmer worked as the restaurant supervisor about ten days before the claimant was discharged.

During her employment, the claimant received some warnings for unsatisfactory customer service. In mid-September 2007, the claimant received a verbal warning for failing to properly notify the employer she was ill and unable to work. The employer also warned the claimant about her failure to find a replacement when she was unable to work. The claimant's absence created extra work for her co-workers. On January 20, 2008, the claimant received a written warning for failing to provide customer service. The employer gave the claimant the January warning after concluding she was not in the restaurant for an extended time. The claimant disagreed with the employer's conclusion. On June 23, 2008, the claimant received a written warning for taking an unauthorized break.

On August 17, the claimant did not like Long following her around while she worked. During her August 17 shift, the claimant was the only server working and forgot to bring a customer a

salad. When the claimant was in the kitchen, Long asked how she happened to forget the salad. Long noted the claimant usually did not write down orders and told her she should start writing down all orders. The claimant indicated this was not necessary and the employer's policy did not mandate servers to write down orders. The claimant appeared upset as she left the kitchen.

While Long was in the kitchen, she heard the claimant tell a co-worker that she (the claimant) was about ready to walk out. The claimant made this comment to an assistant manager because of Long's actions that day where she watched everything the claimant did. Shortly after talking to the claimant about writing down orders, Long served a customer a steak. The customer indicated the steak was not acceptable. Long ordered another steak for the customer. When Long talked to the claimant about the steak, the claimant explained that the customer had ordered a steak medium and not medium rare as he wanted. Before the claimant turned in the order, she had explained the difference between medium and medium rare to the customer. The claimant understood the customer wanted his steak cooked medium. After talking to the customer, Long understood he had ordered the steak medium rare, not medium. The employer concluded that if the claimant had written down the order, the customer would have been satisfied with the first steak served to him.

The employer considered the claimant's failure to write down orders as Long told her to do as insubordination. The August 17 incident would be the claimant's third written warning for poor customer service. In accordance with the employer's policy, on August 18 the employer discharged the claimant for having three written warnings for poor customer service.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Since the claimant received two written warnings in 2008, she should have known her job could be in jeopardy. The warnings the claimant received before August 17 concerned her

attendance and taking unauthorized breaks instead of the orders she took for customers. Before August 17, the employer had not talked to the claimant about writing down orders. Some servers wrote down orders and others did not. The claimant usually did not write down an order unless she had a large group of people at a table.

On August 17, the claimant did not appreciate Long "spying" on everything she did. When Long talked to the claimant about missing the salad, the claimant did not understand that Long wanted her from the time forward to write down all orders. Under the facts of this case, even if the claimant had written down how a steak was to be cooked, the customer may still have sent it back. Since the customer did not testify, the employer did not establish by a preponderance of the evidence that the customer ordered a medium cooked steak.

The employer established business reasons for discharging the claimant. If Long wanted servers to write down all orders, this new policy should have implemented at a time when the new policy could be explained to all employees. The claimant and Long were busy during the August 17 shift. While Long may have intended or wanted the claimant to start writing down all orders immediately, the claimant did not have that same understanding. As a result of a communication problem, the facts do not establish that claimant intentionally disregarded the employer's interests. Also, it may have been somewhat unreasonable for the employer to expect the claimant to immediately change the way she took orders when she had not written down a majority of orders for over two years. The facts do not establish that the claimant was insubordinate or committed a current act of work-connected misconduct. Therefore, as of August 17, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's September 10, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of August 17, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/css