

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**TREVER V PFEIFFER
4135 S 41ST AVE
OMAHA NE 68107**

**HOLIDAY INN & SUITES COUNCIL BLUFFS
C/O EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000**

**Appeal Number: 05A-UI-06655-DT
OC: 05/22/05 R: 01
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Holiday Inn & Suites – Council Bluffs (employer) appealed a representative's June 14, 2005 decision (reference 01) that concluded Trever V. Pfeiffer (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 July 13, 2005. The claimant participated in the hearing. Mara Benjamin of Employer's Unity appeared on the employer's behalf and presented testimony from one witness, Amy Harrison. During the hearing, Employer's Exhibit One was entered into evidence. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 17, 2004. He worked full time as kitchen manager/banquet chef in the employer's Council Bluffs, Iowa hotel. His last day of work was May 25, 2005. The employer discharged him on that date. The reason asserted for the discharge was having a third incident with a delay in meal service.

On May 7, 2005, the claimant was to deliver a brunch casserole at an off-site location at 9:45 a.m. He was about 30 minutes late in the delivery, at least in part because the hotel owner wanted him to use a special recipe she only delivered to him that morning that required the use of frozen hash brown potatoes, which necessitated a longer cooking time than he had been prepared for. He was given a written warning on May 11, 2005. On May 14, 2005, the claimant was serving a complex meat to a group of approximately 100. Service was to begin at 7:00 p.m.; however, at 7:00 p.m., the general manager, Ms. Harrison, told the claimant that the group was not quite ready, to wait about 10 or 15 minutes. The claimant and his staff began serving at approximately 7:15 p.m.; however, serving of the meals was not completed until after 8:00 p.m., causing the client's representative to become upset. On May 16, 2005, Ms. Harrison verbally reprimanded the claimant for the incident.

On May 24, 2005, the claimant was due to serve an offsite event at 5:00 p.m. The location for the event was about ten minutes away from the employer's facility. The employer had only two serviceable vans. At approximately 3:00 p.m., the claimant went to the hotel's front desk and informed the staff that he needed to have one of the vans available at 4:00 p.m. to transport the food. The desk staff indicated that they would let the van drivers know; however, they neglected to note the claimant's request in the van usage log. One of the vans had taken some equipment to the event site and had been expected back shortly, and the other van was transporting some guests. At 4:00 p.m., the claimant went to the front desk to arrange to start loading the van, but was told the van was not back yet. He went back to the front desk several more times before 4:30 p.m., and heard the front desk personnel radio the van drivers to see where they were. At least one of the drivers responded that he was transporting guests and was still unavailable.

The claimant then contacted the banquet manager by cell phone and arranged for her to come back to the hotel facility with her pick up. She arrived at approximately 4:45 p.m.; however, the van that had taken equipment to the event site arrived back at the hotel at the same time. The claimant then loaded the food into the van and was transported to the event site, arriving at approximately 5:05 p.m.; he began serving at approximately 5:10 p.m. The employer concluded that the claimant had not made adequate preparation for being able to deliver the food on time. When the claimant reported for work on May 25, 2005, he was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:

- a. Manifest equal culpability, wrongful intent or evil design; or
- b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is his failure to timely deliver the meal at the event on May 24, 2005 after the prior incidents. The claimant established that he had taken reasonable steps to prepare to timely transport the food on May 24, 2005. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's June 14, 2005 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/sc