IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

STEVEN V RANDALL
Claimant

APPLEBEES NEIGHBORHOOD GRILL & BAR
APPLE CORPS LP
Employer

APPEAL NO. 11A-UI-15769-AT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/06/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Steven V. Randall filed a timely appeal from an unemployment insurance decision dated November 29, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held January 10, 2012 with Mr. Randall participating. General Manager Brady Riddout participated for the employer, Applebees Neighborhood Grill & Bar. Claimant Exhibit A and Employer Exhibit One were admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Steven V. Randall was employed by Applebees Neighborhood Grill & Bar from September 28, 2008 until he was discharged October 22, 2011. He last worked as a bartender. Mr. Randall was scheduled to work at 10:00 a.m. on October 22, 2011. He called at that time to say that he would not be able to work because he needed to re-enter rehab. Company policy requires that an individual contact the employer at least two hours in advance of a shift if he or she is to be absent. On September 29, 2011 Mr. Randall reported to work. He told the manager on duty that he was under the influence of some substance. He was sent home and suspended for a week to arrange for rehab at that time. He did not enter rehab. He had received a warning on September 16, 2011 for swearing and complaining about his job so loudly that customers overheard him. He received a warning on September 17, 2011 for leaving work without obtaining permission from the duty manager. The manager had only allowed Mr. Randall to take a smoke break after finishing cleaning the bar. He received a warning in October of 2010 for tardiness.

Mr. Randall did not request FMLA leave while employed by Applebees. When hired, he received written information about his FMLA rights.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. The evidence establishes that Mr. Randall called to report that he would be unable to work on October 22 but that his call was not made at least two hours before the beginning of his shift. According to 871 IAC 24.32(7) that was an unexcused absence. The evidence establishes that Mr. Randall was suspended and could have been discharged on September 29 for reporting to work under the influence of some substance. The record establishes prior warnings in addition to these final two events. Taken together, the evidence establishes misconduct.

Mr. Randall argued that the discharge was illegal. He submitted documents concerning FMLA from the United States Department of Labor's website. The flaw in this argument is that Mr. Randall never requested FMLA leave. Benefits are withheld.

DECISION:

The unemployment insurance decision dated November 29, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dan Anderson
Administrative Law Judge

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Decision Dated and Mailed

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