

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NEDRA CARR
Claimant

APPEAL NO: 10A-UI-09888-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOSSELMAN INC OF IOWA
Employer

OC: 06/06/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Nedra Carr (claimant) appealed an unemployment insurance decision dated July 2, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Bosselman Travel Center (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 31, 2010. The claimant participated in the hearing. The employer participated through Brenda Burgett, Human Resources Manager and Amanda White, General Manager. Employer's Exhibits One through Six were admitted 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time server from February 7, 2000 through June 4, 2010. She had received previous disciplinary warnings for sexual harassment, rude and inappropriate behavior, and using profanity. A written warning was issued to her on January 4, 2008 for insubordination and foul language. A second warning was issued to her on April 23, 2009 for sexual harassment. The claimant had made inappropriate comments and touched others, making them uncomfortable. The claimant was warned on October 14, 2009 for rude and inappropriate behavior towards customers. Another disciplinary warning was issued to her on December 7, 2009 when her behavior made an assistant manager uncomfortable.

There were three separate customer complaints about the claimant on May 29, 2010 and she was discharged as a result. The claimant was heard using profanity. She was "riding" another employee who was in tears. She told a server that she did not have time for her "fucking shit" and that she needed to get her act together. The claimant told Brandon Skidmore that she was going to take him out back and punch him in the face. She added that she might call her boyfriend to do it instead. The claimant had a habit of adjusting her bra in front of him and she

repeatedly talked about the naked pictures of her boyfriend that she has on her phone. She and a customer had an inappropriate conversation in that the customer said he had a "big one" for her and the claimant responded that she would, "sure come straddle that big one." The claimant wrote "I love you" on tickets which were directed to the line cook and the servers found this embarrassing when cashing out a ticket. It took a long night for the customers to receive their food that night even though it was not busy. The customers felt the claimant was too busy cussing and yelling at people to actually get anything accomplished.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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.

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 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 claimant was discharged on June 4, 2010 after repeated inappropriate behavior. She had been repeatedly warned but it did not change her behavior. The claimant denies any wrongdoing but the preponderance of the evidence supports

the employer's evidence. The claimant's conduct 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 2, 2010, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs