

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RYAN J LEHMANN**  
Claimant

**APPEAL NO. 12A-UI-06381-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAMOUS DAVE'S RIBS INC**  
Employer

**OC: 05/06/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated May 23, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 25, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Jaclyn Fischler participated in the hearing on behalf of the employer with witnesses, Staci Cirksena and Chuck Lecorgne. Exhibits One to Seven were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as an assistant manager for the employer from October 27, 1998, to May 9, 2012. Staci Cirksena is the general manager of the restaurant. The claimant had been warned in July 2011 about making inappropriate comments to employees.

On May 3, 2012, the kitchen staff had forgotten items on two catering orders. A short time later, the restaurant ran out of muffins. The claimant reacted by saying to the kitchen staff, "Really, are you kidding me" in a loud tone of voice to kitchen. The employees tried to blame the servers by saying the servers did not let them know they were running low, but the problem was that the kitchen had not prepared enough muffins to begin with so the claimant let the kitchen staff know that. At some point, the claimant said "I am not going to say it" and walked away because he knew that he was about to lose his temper. Later, when the claimant noticed that muffins were running low, he called out "Last pan," which is the language used to indicate more muffins were being made. Later, the claimant assigned the kitchen staff extra deep cleaning tasks. This was done because management had instructed that the kitchen needed to be thoroughly cleaned, but the kitchen staff considered it as punishment.

The employer discharged the claimant May 9, 2012, after the kitchen staff complained to management about his harsh treatment of them, including assigning them cleaning tasks as punishment for not having muffins ready, on May 3, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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 substantial and 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly about what happened on May 3, 2012, and his testimony is entitled to greater weight than the employer's hearsay statement. While it is clear that the claimant became angry when errors were made by the kitchen staff, I do not believe the conduct rose to the level of harassment and believe his assignment of cleaning duties was not intended as punishment. No willful and substantial misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated May 23, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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