

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE C HICKMAN
Claimant

APPEAL NO: 12A-UI-01968-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELDER SERVE LTD
Employer

OC: 01/15/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 21, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Keith Peterson, Attorney at Law, represented the employer. Elmer Eggiman, the chairman of the board, Donna Blair, the site manager, Jayne Tiffany, the current head cook, Rita Peterson and Robert Amman appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant worked 6.5 years for the employer. She worked full time as the head cook when her employment ended.

The claimant may have been difficult to work for, but her job was not in jeopardy prior to late December 2011. The claimant hired Tiffany as a part-time dishwasher in early November 2011. The claimant understood Tiffany wanted to work full time. The claimant and Blair were friends outside of work. In the past, Blair made comments to other people about how good the claimant was at freezing leftovers and using them later so food was not wasted.

The claimant understood employees were not supposed to take home food that could be frozen and used later. (Employer Exhibit One.) Four years ago the claimant asked and the Board gave her permission to take home waste food for her dog. Waste food was food that could not be frozen and used later.

The claimant participated in monthly Board meetings. During the Board meeting, the food budget was reviewed. Board members did not question the food budget or notice any

problems. In 2011, when Blair was on a medical leave, her replacements had problems estimating how many meals were needed. As a result, the food budget went over budget when Blair was off work. The claimant was in the process of decreasing the food budget deficit and had significantly reduced it by late December.

In early December 2011, Tiffany talked to Blair about food the claimant allowed her to take home. Even though Blair advised Tiffany that this was not allowed, Tiffany continued to take food home. Blair and the claimant were friends outside of work, but Blair did not say anything to the claimant about Tiffany's comments or even asked if she was taking food home.

In late December 2011, Tiffany became upset with the claimant when she wanted to go home early and the claimant would not allow her to do this. Tiffany claimed she had been hurt. Tiffany then contacted Eggiman who told her that the Board was her boss, not the claimant. Tiffany also talked to her attorney who advised her to document problems she had at work.

A Board meeting was called on January 16. Both Tiffany and Blair talked to Board members. Tiffany told Board members that the claimant took food home and gave Tiffany food to take home. At the Board meeting, the employer hired Tiffany as the new full-time head cook. The Board did not talk to the claimant about any of the allegations. Instead, the Board members discharged the claimant. On January 17, Eggiman informed the claimant she was discharged for violating the employer's policy- taking food home for her personal consumption.

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).

The employer discharged the claimant for business reasons. Since Tiffany is the only person who told the Board on January 16 that the claimant took home food and gave food to Tiffany to take home, her credibility must be reviewed. First, Tiffany wanted the claimant's job. If she had not wanted the claimant's job, she would not have accepted this position before the claimant had been discharged. Even though Blair told Tiffany in early December she was not allowed to take food home, she continued to do this until late December. In late December Tiffany became upset with the claimant when she wanted to go home early and the claimant would not allow her to do this. It was only after this incident that Tiffany contacted and talked to Eggiman and her

attorney. Even though Tiffany admitted she took home food after Blair told her she could not, the employer did not discipline her.

If the claimant took home as much food as Tiffany asserted, it is difficult to believe this would not have been reflected in the food budget that Board members reviewed monthly. Even though the food budget was over at the end of the year, the claimant presented undisputed testimony that the food budget was over by a much larger amount after Blair was off work for a while and the claimant had been steadily reducing this deficit. Also, if Blair really believed the claimant was violating the employer's policy, it is difficult to understand why she did not say something to the claimant since they were friends outside of work or report this to the Board in early December. Finally, Tiffany acknowledged she did not know what food the claimant took home. The claimant had the Board's permission to take waste food home for her dog. It is difficult to understand why the Board did not talk to the claimant about Tiffany's allegations. Instead, the employer hired Tiffany as the head cook the day before telling the claimant she was discharged. Given Eggiman's reluctance to acknowledge his part at the Board meeting, the employer's failure to investigate Tiffany's allegations or get the claimant's statement, and the employer did not present any monthly budget information that supported Tiffany's assertion the claimant took food home, the administrative law judge does not find Tiffany's testimony credible.

While the employer may have had business reasons for discharging the claimant, the evidence does not establish that the claimant committed work-connected misconduct. As of January 15, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's February 21, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but did not establish that she committed work-connected misconduct. As of January 15, 2012, the claimant is qualified to receive benefits, provide she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css