

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON T WATERS

Claimant

APPEAL NO. 09A-UI-14865-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURGER KING CORPORATION

Employer

OC: 09/06/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated September 25, 2009, reference 01, that held he was discharged for misconduct on September 3, 2009, and benefits are denied. A telephone hearing was held on November 3, 2009. The claimant participated. The employer did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered the evidence in the record, finds that: The claimant worked as a full-time cook from January 3, 2007 until September 3, 2009. The employer had a meeting on September 3, 2009, which the claimant attended. The employer was questioning the conduct of the manager, and the claimant chose not to want to talk about him. The claimant was discharged for his conduct in the meeting.

The employer failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on September 3, 2009.

The burden is on the employer to establish misconduct, and it failed to participate in this hearing and offer evidence of job disqualifying misconduct.

DECISION:

The decision of the representative dated September 25, 2009, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on September 3, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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