

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLEY D MCQUERRY
Claimant

APPEAL NO. 10A-UI-13808-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALDS
Employer

OC: 01/24/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kimberley McQuerry (claimant) appealed a representative's September 22, 2010 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with McDonalds (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 10, 2010. The claimant was represented by Attorney at Law, and participated personally. The employer participated by Ronnie Sikora, Store Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on June 1, 2010, as a part-time crew member. The claimant signed for receipt of the employer's handbook on June 1, 2010. The claimant was hired at a rate of \$7.50 per hour to work the night shift. There seem to be communication problems between the claimant and store manager. The claimant complained to the store manager that it was paying her \$7.25 per hour. The store manager tried to convince the claimant she should accept the lesser rate of pay and work the day shift. The claimant refused and the employer continued to pay the claimant the wrong rate of pay.

On or about June 25, 2010, the claimant informed the store manager that she had a work-related medical condition from being on her feet at work. The store manager told the claimant she could have the next night off but the claimant should keep trying to work in the future. The claimant did not work on June 26, 2010. The claimant's last paycheck reflected the correct rate of pay.

After June 26, 2010, the employer did not schedule the claimant to work. The claimant tried repeatedly to contact the store manager but she did not return the claimant's calls. The employer provided documentation in July 2010, reflecting that the claimant was still an employee. On July 9, 2010, the employer issued the claimant an employee food discount card.

In August 2010, the store manager saw the claimant and told her that she was still an employee and the claimant could work daytime hours. The employer never scheduled the claimant for any work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 22, 2010 decision (reference 02) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs