

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS R GAULE
Claimant

APPEAL NO. 08A-UI-03125-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIMS FOODS INC-WENDY'S
Employer

**OC: 02/17/08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 17, 2008, reference 02, that concluded he was discharged for work-connected misconduct. A hearing was held on April 23, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. David Williams participated in the hearing on behalf of the employer with witnesses, John Airehart and Shannon Campbell.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a crewmember for the employer from July 20, 2006, to February 14, 2008. The claimant had been disciplined for having small cash shortages on November 21, 2006; May 17, 2007; and September 27, 2007.

On February 14, 2008, the claimant was instructed by the manager to help a new employee who was working at the drive-through window. The claimant knew that he was not to use the cash register and only helped with orders.

The assistant manager approached the drive-through register and told the new employee that she could not let the claimant in the cash register because he was a thief. The comments offended the claimant, especially since customers and employees could hear them. He went to the back room to find the phone numbers to call the corporate headquarters. The assistant manager asked the claimant "what the fuck" he needed the numbers for. The claimant was provoked by assistant manager and responded that it was "fucking bullshit" singling him out on the front line. They exchanged angry words and profanity in front of another manager. The assistant manager then told the claimant to leave the store. The employer discharged the claimant for his improper conduct on February 14, 2008.

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.

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 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.

No willful and substantial misconduct has been proven in this case. The claimant was following his supervisor's instructions in helping a new employee with her orders. He was provoked by the assistant manager accusing him of being a thief and directing profanity at him.

DECISION:

The unemployment insurance decision dated March 17, 2008, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css