

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACY R WALKER
Claimant

APPEAL NO. 09A-UI-00846-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RICHARD MATHSON
GOLD ARCH IOWA
MCDONALDS
Employer

OC: 11/16/08 R: 02
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Stacy Walker, filed an appeal from a decision dated January 16, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 5, 2009. The claimant participated on her own behalf. The employer, McDonald's, participated by Store Manager Diana O'Donnell and Area Supervisor Steve Mathson.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Stacy Walker was employed by McDonald's from January 2, 2008 until November 21, 2008 as a full-time shift manager. She received a verbal warning for being no-call/no-show to work on August 23, 2008. On October 20, 2008, she received three warnings for incidents on the same day, for being 20 minutes late to work, failing to punch in and then giving an incorrect start time to the manager to log her in, and failing to lock the back door of the restaurant when she closed the restaurant. The warning advised her any further policy violations could result in discharge.

The claimant was scheduled to work from 4:30 p.m. November 18 until 3:00 a.m. November 19, 2008. Judith Beatty, the opening shift leader, arrived at 3:00 a.m. to find the claimant in the break room asleep. The claimant maintains she was not asleep but did admit to being in the break room with her head down on the table "with [her] eyes closed." The tasks she was assigned to do during her shift had not been done.

Ms. Beatty sent the claimant home and at 6:30 a.m. notified Store Manager Diana O'Donnell. When the claimant came in for her next shift at 10:00 a.m. she was questioned about her failure to perform the tasks assigned to her and then suspended. Ms. O'Donnell consulted with Area Supervisor Steve Mathson. On the basis of her prior warnings, the decision was made to discharge the claimant. She was notified by phone on November 21, 2008.

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 claimant had been advised her job was in jeopardy as a result of her poor work performance and policy violations. The final incident was sleeping or "resting her eyes" during work hours while still on the clock with her work duties unfinished. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of January 16, 2009, reference 01, is affirmed. Stacy Walker is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeyer
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw