

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATT M QUEEN

Claimant

APPEAL NO. 06A-UI-11650-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOLDEN ARCH INC – CCW PARTNERSHIP

Employer

**OC: 11/12/06 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Matt M. Queen (claimant) appealed a representative's December 4, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Golden Arch, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 19, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Kim Millikan, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 6, 2006. The claimant worked as a part-time maintenance employee. When the claimant did not report to work on October 5, 2006 the employer contacted the claimant. The claimant informed the employer he had accepted another job and could no longer work for the employer.

The claimant started the other job, but it did not work out for him. On October 11, 2006, the claimant contacted the employer to find out if the employer would rehire him. The employer agreed to rehire the claimant as a part-time crew person. The claimant accepted this job.

Upon rehiring the claimant, the employer informed him that during the first 30 days as a crew person, he could have no unexcused absences. The claimant returned to work for the employer on October 13, 2006. On October 24, the claimant did not call or report to work as scheduled.

On October 25, the claimant reported to work late because he misread the schedule. On October 26, an assistant manager sent the claimant home early because of performance and attitude issues. The claimant contacted Millikan about the October 26 incident and complained about the assistant manager picking on him during that shift. The employer informed the claimant the scheduler would try to adjust the schedule so he would not have to work with the same assistant manager again, but Millikan could not guarantee the two of them would not work the same shift again.

On October 29, the claimant did not report to work or notify the employer he was unable to work. The claimant came to the workplace just after his shift would have ended at 7:00 p.m. The claimant was intoxicated. Millikan was very upset with the claimant and told the claimant to leave the employer's establishment. On October 31, when the claimant reported to work 25 minutes late, the employer gave the claimant his fourth written warning. The employer told the claimant this was his final warning. The employer also told the claimant that if he missed anymore work, he would be discharged.

On November 2, the claimant notified the employer he was unable to work because he had a sore arm. On November 3, the claimant again notified the employer he was unable to work. The claimant explained that he had been in a fight and his arm was sore. On November 3, 2006, the employer discharged the claimant for excessive, unexcused absenteeism.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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).

Without the claimant's testimony, the claimant's repeated failure to work as scheduled after the employer rehired him constitutes work-connected misconduct. Even though the claimant notified the employer he was unable to work on November 2 and 3, the facts do not establish that the claimant had an excusable reason for again missing work. Based on the facts presented during the hearing, the claimant is not qualified to receive unemployment insurance benefits as of November 12, 2006.

DECISION:

The representative's December 4, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 12, 2006. This

disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css