

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Alhameed was employed by Hardee's from November 24, 2000 until August 19, 2005 as a cashier. She worked approximately 30 hours each week. She was discharged due to inappropriate conduct in the workplace.

On August 19, Ms. Alhameed was displaying what the employer considered a "bad attitude." She stated that she did not "fucking" want to be there. Because of her attitude, the manager sent her on break. When she returned from break she was assigned to work on the front line. Her job was to take food orders to patrons in the dining room. It did not appear that Ms. Alhameed was working as fast as she could and, therefore, the general manager asked her to pick up her pace. Ms. Alhameed said something under her breath in response. The general manager made a call to the district manager to discuss the problem she was having with Ms. Alhameed,

Ms. Alhameed was within earshot of the general manager and overheard her tell the district manager that she might have to fire someone. Ms. Alhameed assumed the conversation was about her and became irate. She stated that the general manager would not have to fire her as she would just "fucking" quit. She had her voice raised and continued to swear in a loud voice as she went into the customer area of the restaurant. The general manager tried to get her to leave but Ms. Alhameed persisted in using profanity in a loud voice in the dining room. As a result, she was notified of her discharge. She had received a verbal warning approximately two months earlier regarding her attitude at work.

Ms. Alhameed has received a total of \$720.00 in job insurance benefits since filing her claim effective September 4, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Alhameed was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The administrative law judge concludes that Ms. Alhameed's conduct of August 19 is sufficient, standing alone, to constitute disqualifying misconduct. She was correct in assuming that she was the subject of the conversation the general manager was having with the district manager. However, she had not been told that she was, in fact, being fired. Therefore, her use of profanity in the customer area did not occur after she had already been discharged. Ms. Alhameed was not discharged until she refused to stop using profanity in the presence of customers.

Hardees is a family restaurant where one is more likely than not to find a large number of children present. The use of profanity in the presence of any customers is contrary to the employer's standards but more especially in the presence of children. Ms. Alhameed was asked to refrain from the conduct but continued. Her conduct had the potential of discouraging customers from returning to the restaurant. For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Alhameed has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated September 27, 2005, reference 01, is hereby reversed. Ms. Alhameed was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Alhameed has been overpaid \$720.00 in job insurance benefits.

cfc/s