

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY M PARSONS
Claimant

APPEAL NO. 08A-UI-01200-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALD'S
Employer

**OC: 12/02/07 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

McDonald's filed an appeal from a representative's decision dated February 1, 2008, reference 02, which held that no disqualification would be imposed regarding Mary Parsons' separation from employment. After due notice was issued, a hearing was held by telephone on February 19, 2008. Ms. Parsons participated personally. The employer participated by Jerry Mann, Owner/Operator.

ISSUE:

At issue in this matter is whether Ms. Parsons was separated from employment for any disqualifying reason.

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. Parsons was employed by McDonald's from December 20, 2007 until January 13, 2008. She was hired to work part time on the grill. She was discharged because she failed to meet the employer's standards during her 30-day probationary period.

The employer did not feel Ms. Parsons accepted direction well. It was also found that she did not always stack product timely or orderly. Ms. Parsons did not always check with a supervisor before leaving work at the end of her shift. The date on which this last occurred is unknown. She did not refuse to perform any assigned duty. She was never advised that she was in danger of losing her job. Ms. Parsons was at all times working to the best of her abilities.

REASONING AND CONCLUSIONS OF LAW:

The employer indicated in its appeal that misconduct was not being alleged. However, an individual who was discharged from employment is only 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). Ms. Parsons was discharged during her probationary period because she did not meet the employer's standards.

The failure to meet an employer's standards during a trial period of employment does not constitute misconduct within the meaning of the law. See 871 IAC 24.32(5). The employer did not provide evidence of any occasions on which Ms. Parsons deliberately refused to follow a directive from management or deliberately engaged in conduct she knew to be against the employer's policies. The employer alleged that there were dates on which she refused to stock product as directed and occasions on which she left without checking with a supervisor. However, the employer failed to provide specific details of those occasions, such as when they occurred and under what circumstances.

The employer failed to establish that Ms. Parsons deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated February 1, 2008, reference 02, is hereby affirmed. Ms. Parsons was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw