

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH L EXLEY
Claimant

APPEAL NO. 07A-UI-01741-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARDEE'S FOOD SYSTEMS INC
Employer

OC: 01/07/07 R: 03
Claimant: Respondent (2)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Hardee's Food Systems, Inc. (Hardee's) filed an appeal from a representative's decision dated February 8, 2007, reference 01, which held that no disqualification would be imposed regarding Sarah Exley's separation from employment. After due notice was issued, a hearing was held by telephone on March 6, 2007. The employer participated by Kathy Shramek, General Manager, and John Kelchen, District Manager. Ms. Exley did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Exley 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. Exley was employed by Hardee's from March 6, 2002 until January 13, 2007. She was last employed full-time as a shift leader. On January 11, 2007, Ms. Exley and another associate, Jessica, took the garbage out at approximately 7:00 p.m. The two observed a third associate outside smoking marijuana in violation of the employer's drug policy. Ms. Exley sent Jessica home and allowed the individual who was smoking to remain and complete end-of-shift duties. Ms. Exley did not report the incident to management.

Management became aware of the individual smoking marijuana when Jessica was discussing the matter with other associates on January 12. Ms. Exley was not scheduled to be at work again until January 13. On January 13, the employer questioned her about the incident and she acknowledged that she had observed the associate smoking marijuana on the premises. She did not report it to management because she personally knows the associate and her family and felt the associate had had a rough life. As a result of her failure to take action regarding the violation of policy, Ms. Exley was discharged on January 13, 2007. The above matter was the sole reason for the discharge.

Ms. Exley filed a claim for job insurance benefits effective January 7, 1007. She has received a total of \$1,375.00 in benefits since filing her claim.

REASONING AND CONCLUSIONS OF LAW:

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). Ms. Exley was discharged for allowing an associate to smoke marijuana on the work premises in violation of a known work rule. She personally witnessed the conduct but did not send the associate home or notify management of the incident. It was her duty, as shift leader, to make sure that all of the employer's policies were followed and that all violations were reported to management.

Ms. Exley's conduct in allowing an individual to continue working while under the influence of drugs was contrary to the standard of behavior she knew or should have known the employer expected of her. If Jessica's conversation with coworkers had not been overheard by management on January 12, it is likely that the marijuana smoking would have continued since the individual had not received any consequences for smoking marijuana at work on January 11. Ms. Exley's conduct was clearly contrary to the employer's interests and standards and is, therefore, misconduct within the meaning of the law. Accordingly, benefits are denied.

Ms. Exley 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 February 8, 2007, reference 01, is hereby reversed. Ms. Exley 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. Exley has been overpaid \$1,375.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css