

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

UNIQUE J GARDNER
Claimant

APPEAL NO: 06A-UI-10681-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALDS
Employer

OC: 10/01/06 R: 03
Claimant: Appellant (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Unique J. Gardner (claimant) appealed a representative's October 25, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of McDonald's (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 November 28, 2006. The claimant participated in the hearing. Ron Duncan, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 19, 2005. The claimant worked part-time as a crew person. Vickie Wymore had been the claimant's most recent supervisor. As of November 28, Wymore no longer works for the employer.

During her employment, the claimant received several warnings. The employer gave the claimant a written warning on April 18, 2006, for eating food without paying for it. The claimant did not sign the warning because a manager told her she could have the food. On June 3, 2006, the employer gave the claimant a written warning for failing to work as scheduled on June 3, 2006. The claimant did not sign this written warning for failing to call or report to work because prior to June 3, the claimant talked to her manager about a friend's pending funeral. The claimant told her manager that she did not know when a friend's funeral would be but she planned to go to the funeral. The claimant understood the employer gave her permission to attend her friend's funeral. The employer informed the claimant on the June 3 warning that this was her final warning and any further violations of the employer's policy would result in discipline, which could include termination.

On June 24, the employer gave the claimant a written warning for leaving work early at the end of the day without authorization. Even though the employer gave the claimant this warning, she had not left work until a manager told her she could leave. The claimant believed the manager let her leave after he noticed the claimant's mother was waiting in the parking lot for the claimant.

In early or mid-August, the claimant's mother contacted the employer and told the employer the claimant could not work until 11:00 p.m. The claimant's mother transported the claimant to work and told the employer she would not stay up after 11:00 p.m. to pick up her daughter. On the day the claimant left before 11:00 p.m., she was the only lobby person scheduled. When the claimant started working for the employer, she informed the employer she could not work after 11:00 p.m. At various times, the employer scheduled the claimant to work after 11:00 p.m.

On August 11, 2006, the claimant's mother had to take the claimant's grandmother to Iowa City for an appointment. As a result, the claimant did not have a way to get to work. The claimant learned about the appointment the day before. She contacted the employer to report she was unable to work as scheduled on August 11. Wymore concluded the claimant had been unable to work a number of times and discharged her because she was no longer able to work her scheduled hours.

The claimant is 16, but does not drive. During the school year, the claimant attends school. The claimant's only means of getting to work was her mother who took the claimant to work and picked her up from work. The claimant did not know anyone who could have taken her to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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).

Even though the claimant received some warnings for failing to work as scheduled, the claimant either had permission or understood she had permission from the employer that she did need to work as scheduled on June 3 and 24. In August, the claimant's mother contacted the employer and told the employer that the claimant could not work after 11:00 p.m. The facts indicate the employer scheduled the claimant to work after 11:00 p.m. even though at time of hire the claimant informed the employer she could not work late. On August 11, the fact the claimant

notified the employer she was unable to work as scheduled shows that she did not substantially disregard the employer's interests. Under the facts of this case, the evidence does not establish that the claimant intentionally failed to work as scheduled. The claimant did not commit work-connected misconduct. As of October 1, 2006, the claimant is qualified to receive unemployment insurance benefits.

Since the claimant attends school, the issue of whether the claimant is able to and available to work is remanded to the Claims Section to investigate and issue a written decision.

DECISION:

The representative's October 25, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 1, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant. The issue of whether the claimant is able to and available for work when she attends school full time is remanded to the Claims Section to investigate and issue a written decision.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs