

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY L SPOONER
Claimant

APPEAL NO. 08A-UI-02227-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ROCK KING LP
BURGER KING**
Employer

**OC: 02/03/08 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Tracy Spooner, filed an appeal from a decision dated March 3, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 20, 2008. The claimant participated on her own behalf. The employer, Burger King, participated by General Manager Lacey Nagel.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Tracy Spooner was employed by Burger King from June 14, 2005 until February 6, 2008, as a full-time assistant manager. The claimant had worked for the employer on a prior occasion, which began September 1, 2004, at which time she received a copy of the employee handbook. The handbook specifically informs employees they are subject to immediate discharge for assault on another employee or a guest.

On February 3, 2008, the claimant arrived for work and an employee, Megan, was upset because another employee had “gotten away” with giving food to customers who had not paid for it. Ms. Spooner said she should talk with Jeremy, the manager on duty at the time the incident occurred. The claimant and Jeremy discussed the matter and the decision was made to discharge the employee. Shortly after that, the claimant approached Megan, who is also her daughter, at the drive through window. Megan was giving a drink and a small sack to a drive through customer who had not paid for the items. This customer was a personal friend of Megan’s.

When Ms. Spooner confronted Megan about this, Megan called her a “bitch” and the claimant slapped her. Megan called General Manager Lacey Nagel at home to report the incident and the claimant called a bit later. Ms. Nagel and District Manager Tim Maletta reviewed the surveillance video of the incident on February 5, 2008, and then Mr. Maletta discharged the claimant on February 6, 2008, for violating the policy against workplace violence.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. “Misconduct” is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The claimant reacted inappropriately to bad language being used by her subordinate. Even if Megan was her daughter, in the work place she was first and foremost a co-worker and subordinate. Ms. Spooner violated the employer's policy regarding physical violence against employees and guests. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of March 3, 2008, reference 01, is affirmed. Tracy Spooner is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw