

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARMELITA REDDING
Claimant

APPEAL NO: 13A-UI-10155-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALDS
Employer

OC: 08/04/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 29, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on October 18, 2013. The claimant participated in the hearing and was represented by Attorney Brandon Ruopp. Larry Freyberger, General Manager participated in the hearing on behalf of the employer. Claimant's Exhibits A, B and C, were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time swing manager for McDonalds from April 10, 2013 to August 2, 2013. She was discharged because the employer stated her hair was touching the collar of her uniform and she refused to put it up.

The claimant had her hair cut above the collar of her uniform July 31, 2013 (Claimant's Exhibits A and B). She worked with General Manager Larry Freyberger without incident August 1, 2013. Mr. Freyberger came out of his office August 2, 2013, and told the claimant to put her hair in a ponytail. She told him she could not do so because her hair was too short to go back into a pony tail without falling out. He noticed two other employees with their hair down and told them to go in the bathroom and put their hair up. Both women complied with his directive as it was the employer and health department's policy. When the claimant told him for the second time her hair would not stay up in a ponytail he told her to go home, saying, "Good luck," which the claimant accurately interpreted as the termination of her employment.

The claimant received four written warnings during the last year and refused to sign all of them. All of the warnings state that any further infractions could result in further disciplinary action up to and including termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. 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 substantial and 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).

While the employer testified the claimant's hair was touching her collar, Claimant's Exhibits A and B, taken by the claimant's daughter after the claimant was sent home from work August 2, 2013, clearly demonstrate that was not the case. The claimant's hair appears to be at least an inch above the collar of her uniform. The claimant tried to explain to Mr. Freyberger that her hair was too short to put in a ponytail but he would not accept her response and terminated her employment for refusing to put her hair in a ponytail. Although Mr. Freyberger testified the claimant refused to comply with policy and put her hair up, the claimant was physically unable to

get her hair in a ponytail and because it was not violating policy she should not have been ordered to put it in a ponytail. She had it cut above her collar and reasonably believed it would not be an issue at work. Under these circumstances, the administrative law judge concludes the claimant's hair did not violate the employer's policy and she did not refuse to comply with a directive but was unable to comply. The claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 29, 2013, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs