

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD R THOMAS JR
Claimant

APPEAL NO: 07A-UI-05074-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BLOUNT RESTAURANT MGMT INC
BURGER KING**
Employer

OC: 04/22/07 R: 02
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Blount Restaurant Management, Inc./Burger King (employer) appealed a representative's May 15, 2007 decision (reference 01) that concluded Ronald R. Thomas, Jr. (claimant) was qualified to receive unemployment insurance benefits after a separation from employment from. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 4, 2007. The claimant participated in the hearing. Kelly Battista of TALX Employer Services appeared on the employer's behalf and presented testimony from three witnesses, Kevin Hardie, Dana Hotchkin, and Marta Stamey. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 25, 2006. He worked part time (approximately 25 hours per week) as team member at the employer's West Des Moines, Iowa restaurant. His last day of work was April 20, 2007. The employer discharged him on April 23, 2007. The stated reason for the discharge was leaving work without permission.

On April 20, a Friday, the claimant was scheduled to close, which meant after the restaurant closed at 12:00 a.m. he was part of the team responsible for closing duties, which could take up to about 45 minutes. At about 12:30 a.m. the claimant finished mopping the floor and told Ms. Hotchkin, the crew leader and person in charge that he was leaving. She noted to him that there were still some chores to complete, such as some dishes, but he told her that Ms. Stamey, the assistant manager who had left when her shift ended at 12:00 a.m. had told him he could leave when he was finished mopping as his mother was waiting for him. Ms. Hotchkin responded that she had no knowledge of this and that there were still duties to complete. The normal procedure was for the entire crew to work together until all tasks were completed and

leave the restaurant at the same time. The claimant continued to insist that Ms. Stamey had said he could leave when he was done mopping, and then left.

Ms. Stamey had not told the claimant he could leave when he was done mopping before the completion of all of the chores by the entire closing crew.

The claimant established a claim for unemployment insurance benefits effective April 22, 2007. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$450.00.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

Iowa Code § 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

The claimant's leaving without permission before the completion of all duties by making a false claim of having had permission shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's May 15, 2007 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 22, 2007. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is overpaid benefits in the amount of \$450.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs