

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROBYN M WADDELL
1711 HAMMOND AVE
WATERLOO IA 50701

J & M PARTNERSHIP
MCDONALDS
2016 HOWARD AVE
WATERLOO IA 50702

Appeal Number: 05A-UI-00992-DWT
OC: 12/26/04 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Robyn M. Waddell (claimant) appealed a representative's January 19, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of McDonalds (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 February 14, 2005. The claimant participated in the hearing. Vicky Wymore, 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 November 4, 2002. Prior to December 24, 2004, the claimant worked as a manager. The claimant understood employees could receive a 50 percent discount and an employee's family could receive a 25 percent discount. The claimant knew employees were to be with a family member when a family discount was given. The claimant observed other managers and supervisor give family discounts to their family when they worked. The claimant assumed she could do the same.

Prior to December 24, 2004, the claimant's job was not in jeopardy. On December 24, 2004, the claimant was just coming off a break when her boyfriend came with her son to buy some food. The claimant rang up the purchase and was in a hurry so she could get back to work. Instead of hitting the 25 percent family discount key, she hit the 50 percent discount key. The claimant sold the food purchase to her boyfriend and son for a 50 percent discount. After the claimant made this mistake, she realized she made an error and contacted a supervisor on duty about this mistake. The supervisor was busy and indicated she would take care of the situation later.

A manager on duty reported to Wymore that the claimant gave her boyfriend a 50 percent discount. When Wymore talked to the claimant, she admitted she had done this because she had and offered to pay the difference.

Although the employer had no documented record that the claimant had ever done anything like this before, the employer discharged the claimant for the December 24 incident. The employer concluded the claimant stole the employer's money by giving her boyfriend a 50 percent discount.

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 §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).

The claimant's testimony as to what occurred on December 24, 2004 must be given more weight than the employer's reliance on reports from employees who did not testify at the hearing. Therefore, the evidence indicates the claimant made a mistake when she entered the 50 percent discount instead of the 25 percent family discount. Since the evidence indicates the claimant advised the manager on duty of what she had done almost immediately, the facts do not establish that the claimant intentionally disregarded the employer's interests. The claimant accidentally hit the wrong discount key and immediately informed the employer what she had done. The facts do not support or dispute the claimant's allegation that other employees gave discounts to family members when they worked. The claimant had no realization she was violating the employer's policy on December 24 when she checked out her boyfriend's food purchase.

The employer established compelling business reasons for discharging the claimant. The facts do not, however, establish that the claimant committed work-connected misconduct. Therefore, as of December 26, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 19, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of December 26, 2004, 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.

dlw/tjc