

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBY WATSON
Claimant

APPEAL NO: 07A-UI-01871-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIZZA HUT
Employer

OC: 01-28-07 R: 02
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 16, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 12, 2007. The claimant participated in the hearing. Christine Hocraffer, Area General Manager, participated in the hearing on behalf of the employer.

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 general manager for Pizza Hut from October 23, 2002 to January 26, 2007. Christine Hocraffer, Area General Manager, noticed for several months that the claimant was struggling with the restaurant's performance in areas such as cleanliness, delivery performance, staffing, training and returning company e-mails in a timely manner. On January 24, 2006, the claimant received a performance improvement plan for food control and low scores on customer reports. On October 19, 2006, he received a performance improvement plan for cleanliness, labor problems, delivery performance, and low scores on customer and internal reports. The claimant did improve his scores on food controls and his customer scores. The cleanliness, labor and delivery scores did not improve. On January 4, 2007, Ms. Hocraffer talked to the claimant about his failure to improve his performance and told him she did not think he was the right leader to move the restaurant forward and his communication with his team was not good and they did not respond to him as a leader. On January 10, 2007, the employer started a new delivery project but the claimant did not schedule the time to do it and did not show up for the meeting. On January 24, 2007, Ms. Hocraffer again talked to the claimant about her concerns with the claimant's performance such as not training a person who wanted to be an assistant general manager, failing to complete employee files, failing to do things Ms. Hocraffer asked him to do, failing to follow through with the cleanliness checklist and missing deadlines. She told him several times that he had to "get it" and she had

taken him to stores in Ankeny and Altoona to see clean restaurants and showed him in the book where it says how to complete cleanliness reviews. The claimant did not hold shift managers accountable for not filling out the cleanliness checklist and did not hold shift leaders accountable for labor and staffing issues. He often missed deadlines and was asked to attend orientation and to attend another class. The claimant told Ms. Hocraffer his motivation level was a 4 on a scale of 1 to 10 with 10 being the highest and asked him to think about whether he wanted to remain as general manager. The claimant received a final written warning in December 2005 for taking a case of wings from the store; a verbal warning July 18, 2005, for missing deadlines for scheduling requirements; and a verbal warning October 18, 2006, for failure to control labor. After considering all of these issues the employer terminated the claimant's employment for failure to meet the standards of a general manager.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979). The claimant had the ability to perform the job to the employer's expectations as demonstrated by his performance in the past, but was no longer motivated and was no longer meeting the cleanliness expectations, delivery performance, staffing, training, food controls, or internal survey standards, despite being warned about his performance on numerous occasions. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

Iowa Code section 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 February 16, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has

worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,493.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs