

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ASHLEY P JOHNSON**  
Claimant

**APPEAL NO. 09A-UI-05978-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KAKAR INC  
MCDONALD'S RESTAURANT**  
Employer

**OC: 01/18/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

McDonald's Restaurant (employer) appealed a representative's April 13, 2009 decision (reference 04) that concluded Ashley Johnson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 15, 2009. The claimant participated personally. The employer participated by Aaron Smith, Supervisor.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 24, 2008, as a part-time crew member. On March 16, 2009, the supervisor sent the claimant home. The claimant was not scheduled to work for the rest of the week. On March 21, 2009, the claimant checked the schedule and found that the supervisor removed her from the schedule. The claimant assumed she had been fired. On March 23, 2009, the claimant brought her uniform back and told a swing manager that she was terminated. The supervisor was unaware of the facts and thought the claimant had quit work.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant had no intention to voluntarily leave work. This separation must be looked upon as involuntary.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer's representative sent the claimant home and removed her from the work schedule. The claimant believed that the representative had authority to remove her from the schedule and, therefore, from employment. The employer did not provide any days of work the claimant was scheduled and did not appear. The claimant reasonably believed she was terminated. The employer did not provide any evidence of job-related misconduct as a reason for removing the claimant from the schedule. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's April 13, 2009 decision (reference 04) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/css