

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

JESSICA A LACY
1014 CHATTERTON ST
GRINNELL IA 50112

TDK ENTERPRISES INC
DAIRY QUEEN
702 – 2ND AVE
GRINNELL IA 50112

Appeal Number: 05A-UI-05948-DWT
OC: 05/15/05 R: 02
Claimant: Respondent (1)

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:

Dairy Queen (employer) appealed a representative's May 27, 2005 decision (reference 01) that concluded Jessica A. Lacy (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 21, 2005. The claimant participated in the hearing. Dave Kummer, the owner, 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 the spring of 2004. The claimant worked as a full-time assistant manager.

Toward the end of her employment, the employer concluded the claimant no longer wanted to work for the employer. The employer believed the claimant had a negative attitude. On May 14, the claimant worked 3:00 p.m. to close. Around 6:30 p.m., the claimant went to the back of the employer's facility and decorated ice cream cakes that were on order. There were a number of cakes that had to be decorated. The claimant worked in the back until around 9:30 p.m. or just before Kummer came to the store. When Kummer arrived, the outside lights were not on. The restaurant looked as if it were not open. Kummer immediately concluded the claimant intentionally failed to turn on the lights that night. When he asked her about the lights, she did not know if they were on or off. Kummer turned on the lights when he arrived.

The next day, two employees reported that the claimant knew the lights were not on and did not turn them on. Even though one employee reported that she had told the claimant the lights were not on, the claimant denied such a conversation took place the night of May 14. Any of the employees could have turned on the lights when it became dark.

The employer discharged the claimant on May 15 because the employer concluded the claimant intentionally failed to turn on the outside lights, which resulted in a loss of sales for the employer that night. There was at least one time when the claimant visited the employer's business at night and the lights were not on. The claimant turned on the outside lights and nothing more was said about the incident.

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).

First, the employer relied on hearsay information from witnesses who did not testify at the hearing. Even though the employer had employees write a written statement, these statements

are still considered hearsay information. The claimant's testimony is credible and must be given more weight than the employer's reliance on unsupported hearsay information. The employer's assertion that the claimant intentionally failed to turn on the lights so the employer would lose money that night is not supported by credible evidence.

Next, the claimant was the manager on duty the night of May 14 and she was ultimately responsible for the actions of all her employees. Since no one turned on the outside lights that night, the employer established compelling business reasons for discharging the claimant. Even though the testimony revealed a mutual disrespect from both parties, the facts do not establish that the claimant intentionally and substantially disregarded the employer's interests. The claimant was busy in the back of the employer's facility and forgot about turning on the outside lights the evening of May 14. The claimant did not tell other employees they should not turn on the lights. The claimant did not commit work-connected misconduct the evening of May 14, 2005. Therefore, as of May 15, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 27, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of May 15, 2005, 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/pjs