

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIM L MASON

Claimant

APPEAL NO. 10A-UI-14224-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BURGER KING
LAD CORPORATION**

Employer

OC: 08/29/10

Claimant: Respondent (2R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated October 11, 2010, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on November 29, 2010. The claimant participated personally. The employer participated by Mr. Allen Eilers, Franchisee/Corporate Secretary.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: The claimant was employed by the captioned employer, doing business as Burger King, from August 29, 2009 until June 11, 2010 when he was discharged from employment. Mr. Mason worked as a part-time kitchen crewmember and was paid by the hour. His immediate supervisor was the facility manager, Jennifer Renthner.

Mr. Mason was discharged after company management received additional complaints from the mother of an adolescent female worker about Mr. Mason's conduct. The female crewmember's mother complained that Mr. Mason had engaged in inappropriate behavior by directing unwanted attention towards the young worker and/or blocking her movement in the restaurant.

Because the female worker's mother had complained some months previously and Mr. Mason had been specifically warned about his conduct, the employer decided to investigate a most recent complaint further. Mr. Eilers obtained statements from other crewmembers and management and the adolescent female worker as well. When the statements of the other workers confirmed that Mr. Mason had continued to act inappropriately after being warned, Mr. Eilers made a decision to terminate the claimant from his employment. The statement of the adolescent worker confirmed to the company that Mr. Mason had continued to direct

unwanted attention towards the female worker and that the claimant had blocked the worker's egress from a break room for a period of time.

Mr. Mason denies all the employer's allegations. It is the claimant's position that he has routinely been treated unfairly by the employer.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The evidence in the record establishes that Mr. Mason had been specifically warned about his conduct towards adolescent female workers. Based upon a previous complaint by a young worker's mother, the employer had investigated and issued Mr. Mason a warning about his conduct warning the claimant that he would be discharged if it continued.

Mr. Mason was discharged after the employer again received complaints about Mr. Mason's conduct and interaction with the female worker. The employer acted reasonably in investigating the matter prior to discharging the claimant. Statements from management, other employees and the female worker herself show that the claimant continued to act inappropriately, to direct

unwelcome attention to the female worker and that Mr. Mason's conduct was continuing to create an unacceptable work environment for other employees.

The claimant's conduct showed a willful disregard for the employer's reasonable standards of behavior that it had a right to expect of its employees under the provisions of the Employment Security Act. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated October 11, 2010, reference 02, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets

all other eligibility requirements of Iowa law. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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