

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA F MCDUFFEE
Claimant

APPEAL NO. 11A-UI-04613-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALD'S
Employer

**OC: 03/06/11
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

McDonald's filed an appeal from a representative's decision dated April 1, 2011, reference 02, which held that no disqualification would be imposed regarding Christina McDuffee's separation from employment. After due notice was issued, a hearing was held by telephone at 1:00 p.m. on May 3, 2011. The employer participated by Terri Torres, area supervisor.

Ms. McDuffee responded to the notice of hearing but was not available at the scheduled time at the telephone number she provided for the hearing. She did not contact the Appeals Section until approximately 2:07 p.m., after the hearing record closed at 1:32 p.m. She indicated that her telephone had not rung. She acknowledged that she did not call in sooner because she forgot about the hearing. She did not establish good cause for not participating at the scheduled time and, therefore, the administrative law judge declined to reopen the hearing record.

ISSUE:

At issue in this matter is whether Ms. McDuffee was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. McDuffee was employed by McDonald's from June 12, 2007 until March 8, 2011. She worked from 35 to 38 hours each week as a crew member. She was discharged after receiving a series of warnings regarding her job performance.

Ms. McDuffee received a written warning on March 10, 2010 because she was late due to oversleeping. She received another written warning on August 11, 2010 because she was too slow in the drive-thru lane. The employer has specific time standards dictating how fast customers are to be served. She received another written warning on November 8, 2010 because she failed to give the correct condiments to a customer in drive-thru. Ms. McDuffee's next warning was on March 7, 2011. She was not "starring" the cheese correctly on sandwiches. This involves placing the second piece of cheese on a sandwich in such a fashion that the four corners of the second slice are placed in the middle of each of the four sides of the first slice so as to resemble a star. She was also failing to cut the chicken for salads in the proper fashion. She was cutting the breast patty in three to four sections rather than the seven to nine slices required by the employer.

The decision to discharge Ms. McDuffee was based on a customer complaint on March 8, 2011. She had failed to give a customer the correct order in the drive-thru. The customer then tried to get her attention at the window but she did not respond. She was talking with a coworker at the time. She told the employer that she did not hear the customer knock on the window. Apparently, the coworker she was talking to did not hear the customer, either. Based on this complaint and her prior warnings, Ms. McDuffee was discharged the same day.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Before a disqualification is imposed, the evidence must establish substantial misconduct. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Ms. McDuffee had received four warnings during the last year of her employment and prior to March 8.

The employer did not present evidence of any occasions on which Ms. McDuffee was late after the warning of March 10, 2010. She was never written up again for being too slow after the warning of August 11, 2010. She was never warned again about incorrect condiments after the warning of November 8, 2010. There had been no prior warnings about “starring” cheese or cutting the chicken incorrectly before March 7, 2011. The employer did not present evidence of any customer complaints, other than incorrect condiments, other than that of March 8, 2011. Although she did have some lapses in good performance, the incidents cited by the employer were only occasional. Given the pace one usually finds in a fast-food restaurant, some errors are bound to occur. Ms. McDuffee’s errors were not so frequent as to establish an intentional disregard of the employer’s standards.

It was well within the employer’s prerogative to discharge Ms. McDuffee. However, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Although Ms. McDuffee may have been an unsatisfactory employee, her conduct did not rise to the level of disqualifying misconduct. As such, benefits are allowed.

DECISION:

The representative’s decision dated April 1, 2011, reference 02, is hereby affirmed. Ms. McDuffee was discharged, but misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw