

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN A TURNER
Claimant

APPEAL NO: 10A-UI-09350-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOONE FOODS INC / MCDONALDS
Employer

OC: 05/30/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Steven A. Turner (claimant) appealed a representative's June 28, 2010 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Boone Foods, Inc. / McDonald's (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 17, 2010. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on or about August 13, 2009. He worked full time as a swing manager at the employer's Boone, Iowa restaurant. His last day of work was May 21, 2010. The employer discharged him on May 22, 2010. The reason asserted for the discharge was an off-duty incident involving another swing manager.

The claimant got off work at 8:00 p.m. on May 21. He lived only a few blocks away from the restaurant. At about 3:45 a.m. he went through the drive-through lane of the restaurant and ordered some items. When he got to the window, he discovered he had neglected to bring his wallet with him. The employee at the window began to "promo" or "comp" the items, although the claimant did not request this and had not immediately been aware what the employee was doing. The other swing manager came over and questioned what was going on. The claimant then indicated he would just go home and get his wallet. He did go home, but then went to bed instead of going back with his wallet to pay for and get the items. The employer determined that there would be too much tension between the two swing managers because of the incident so they could not work together, and the employer determined it would be best that the claimant's employment be ended.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his interaction with the other swing manager at the time of his attempted off-duty meal purchase. Under the circumstances of this case, the claimant's conduct was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's June 28, 2010 decision (reference 02) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs