

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NADIRAH L CHERUIYOT
Claimant

APPEAL NO. 09A-UI-16796-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KASTIM CORPORATION
Employer

OC: 09/13/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Nadirah Cheruiyot filed an appeal from a representative's decision dated November 3, 2009, reference 02, which denied benefits based on her separation from Kastim Corporation. After due notice was issued, a hearing was held by telephone on December 14, 2009. Ms. Cheruiyot participated personally. The employer participated by Tina Schroeder, Manager.

ISSUE:

At issue in this matter is whether Ms. Cheruiyot 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. Cheruiyot was employed by Kastim Corporation, doing business as McDonald's, from June 15 until July 17, 2009. She worked approximately 30 hours each week as a crew person. She was discharged from the employment. She received a written warning on June 28 because she was arguing with the swing shift manager. She did not want the manager to have access to her register drawer.

Ms. Cheruiyot received a written warning and one-week suspension on July 3. The warning was due to the fact that she was using profanity at the workplace in the presence of customers. The warning was also due to the fact that she failed to complete assigned duties. She signed the warning without making any comments in the appropriate section. The decision to discharge was based on the fact that Ms. Cheruiyot was again using inappropriate language in front of customers on July 16. She said to the assistant manager, "if you have some 'shit' to say to me, say it." She then became argumentative with another manager. The store manager spoke to Ms. Cheruiyot on July 17 and notified her of the discharge.

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). Ms. Cheruiyot was discharged due to a pattern of disregarding the standards of behavior the employer had the right to expect.

Ms. Cheruiyot was warned on June 28 about arguing with management. She was suspended on July 3 for one week for using profanity at work. In spite of the warnings, she was again arguing with management and using inappropriate language on July 16. She was only in the employment for one month. Given the repeated nature of her conduct and the relatively short period of employment, the administrative law judge concludes that substantial misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated November 3, 2009, reference 02, is hereby affirmed. Ms. Cheruiyot was discharged for disqualifying misconduct. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs