

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN A BARNES
Claimant

APPEAL NO. 10A-UI-14933-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURGER KING
Employer

**OC: 03/28/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Susan Barnes filed an appeal from a representative's decision dated October 28, 2010, reference 04, which denied benefits based on her separation from Burger King. After due notice was issued, a hearing was held by telephone on December 9, 2010. Ms. Barnes participated personally. The employer participated by Tim Maletta, Managing Director, and Jennifer Pint, Assistant Manager. The employer was represented by Joseph Martin, Attorney at Law.

ISSUE:

At issue in this matter is whether Ms. Barnes 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. Barnes was employed by Burger King from May 29, 2008 until September 30, 2010. She worked from 25 to 30 hours each week as a crew member. She was discharged because she was repeatedly rude to coworkers and members of management.

On January 22, 2009, Ms. Barnes received a written warning because she failed to change the lids of condiments as directed by the managing director. She initially ignored the directive and, when asked a second time, argued with the director. She received another written warning on July 20, 2009 for arguing with the assistant manager. On April 7, 2010, she received a written warning because of her attendance. She received a verbal warning on August 13, 2010 because her fingernails were too long. She was also addressed on that date about her loudness and rudeness to coworkers.

Ms. Barnes received a written warning on August 23, 2010 for her attitude. She was rude to other crew members and to management. She was throwing food on the production board, causing it to be wasted product. She received another written warning on August 25, 2010 for being loud. She had been cautioned three times that morning about her attitude. On September 8, 2010, she received a verbal warning for yelling and arguing. She was disputing

that her work area was messy. She received another warning for similar conduct on September 16, 2010.

The decision to discharge Ms. Barnes was based on the fact that she engaged in an argument with the assistant manager on September 29. When she reported for work, she noted that prep work had not been done by the morning shift. She questioned the assistant manager as to why Corey, a morning shift employee, had been allowed to leave and was told it was his time to leave. Ms. Barnes said she needed help and then began to argue with the assistant manager about her decision to allow Corey to leave rather than having him stay to assist with the prep work. The argument lasted from 10 to 15 minutes. Ms. Barnes was notified of her discharge on September 30, 2010.

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. Barnes was discharged as a result of a history of loud and disruptive conduct at the workplace. She received both verbal and written warnings about her conduct and attitude, but no changes were made. On some occasions, her outbursts could be heard by customers in the dining room. Ms. Barnes' conduct in arguing with management was insubordinate.

Ms. Barnes' repeated disruptive conduct at the workplace constituted a substantial disregard of the standards she knew the employer expected of her. Her conduct had the potential of costing the employer customers as well as crew members. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established. As such, benefits are denied.

DECISION:

The representative's decision dated October 28, 2010, reference 04, is hereby affirmed. Ms. Barnes was discharged by Burger King for misconduct in connection with her employment. 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/kjw