

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CAROL D POOLE
327 KINNEY ST APT 2
MCGREGOR IA 52157**

**MCDONALDS
602 E MARQUETTE RD
PRAIRIE DU CHIEN WI 52157**

**Appeal Number: 04A-UI-08668-HT
OC: 10/26/03 R: 04
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Carol Poole, filed an appeal from a decision dated August 6, 2004, reference 05. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 9, 2004. The claimant participated on her own behalf. The employer, McDonald's, participated by Second Assistant Manager Alana Ryker and Area Supervisor Nancy Rogers.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Carol Poole was employed by McDonalds from

November 10, 2003 until July 14, 2004. She was a full-time crew member. At the time of hire, the claimant received copies of company policies regarding her job duties. One of the policies, also mandated by state law, is that uncooked meat may not be handled unless a person is wearing gloves.

Ms. Poole received a verbal warning from a manager on June 22, 2004 for handling the frozen hamburger patties without the "blue gloves." On July 2, 2004, she was given a written warning for the same policy violation. The warning notified her she would be discharged if she violated the policy again. At that time, she told the manager the gloves bothered her hands and she was advised she would need to provide a doctor's statement verifying she could not wear the gloves but she never presented one.

On July 14, 2004, Second Assistant Manager Alana Ryker saw the claimant again handling the frozen patties without using gloves. She was taken to the office where she admitted she knew she was to wear them and had been warned of the consequences for failing to do so. Ms. Ryker discharged her at that time.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised her job was in jeopardy as a result of her failure to follow company and state mandated food handling requirements. In spite of the warning, she continued violating the policy, placing the employer in jeopardy for violating state law. This is conduct not in the best interest of the employer and a violation of a known company policy. The claimant is disqualified.

DECISION:

The representative's decision of August 6, 2004, reference 05, is affirmed. Carol Poole is disqualified, and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/tjc