

**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**

**CRYSTAL G SCHNEIDER
3217 – 14TH AVE SE
CEDAR RAPIDS IA 52403**

**THE RESTAURANT COMPANY
PERKINS RESTAURANT & BAKERY
c/o TALK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-11691-CT
OC: 10/09/05 R: 03
Claimant: Respondent (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 for Misconduct

STATEMENT OF THE CASE:

The Restaurant Company filed an appeal from a representative's decision dated November 3, 2005, reference 01, which held that no disqualification would be imposed regarding Crystal Schneider's separation from employment. After due notice was issued, a hearing was held by telephone on December 13, 2005. The employer participated by Jeff Agar, General Manager; Kim Shell, Service Leader; and Katherine Tickle, Assistant Kitchen Manager. Ms. Schneider did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Schneider was employed by The Restaurant

Company, doing business as Perkins Restaurant & Bakery, from March 20, 2004 until October 10, 2005. She worked from 15 to 20 hours each week as a server. On October 10, she asked Kim Shell if she could be taken off the floor to begin clean-up. Ms. Shell denied the request and assigned Ms. Schneider a table of eight to serve. She waited on the customers as directed.

After Ms. Shell denied her request, Ms. Schneider was talking to Katherine Tickle, assistant kitchen manager, in an area between the serving floor and the pantry. Ms. Schneider stated that Ms. Shell was being a "bitch," grumbled, and walked away. The comment was not heard by anyone other than Ms. Tickle. The employer has a written work rule prohibiting the use of profanity and, therefore, Ms. Schneider was discharged on October 10, 2005. Her use of the term "bitch" in reference to Ms. Shell was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Schneider was separated from employment for any disqualifying reason. 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. Schneider was discharged because she said Ms. Shell was being a "bitch." The term was not used in the course of an argument with Ms. Shell and was not accompanied by any refusal to obey a directive. In fact, Ms. Shell was not present to overhear the comment.

Ms. Schneider's comment was made in the course of letting off a little steam to a manager. It was not made in the presence of others. Although she may have used poor judgment in her choice of words, this single, "hot-headed" incident is not sufficient to establish a substantial disregard for the employer's interests or standards. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reason stated herein, benefits are allowed.

DECISION:

The representative's decision dated November 3, 2005, reference 01, is hereby affirmed. Ms. Schneider was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjw