

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELANIE S GARRETT**

Claimant

**APPEAL NO. 11A-UI-02169-S2T**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**BURGER KING CORPORATION**

Employer

**OC: 01/16/11**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Melanie Garrett (claimant) appealed a representative's February 23, 2011 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Burger King (employer) for insubordination in connection with her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 21, 2011. The claimant participated personally. The employer participated by Paula Jameson, Restaurant General Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 16, 2009, as a part-time crew member. The employer used the words "fucking cunt" and "fucking bitch" at work frequently. She called the claimant those names and told other workers about the claimant's personal problems but the claimant remained silent. Later the claimant complained about her work environment but it did not change. On January 12, 2011, the claimant had transportation issues and was unable to appear for work. She did notify the employer but not two hours prior to the start of the shift as specified in the handbook.

On January 13, 2011, the employer issued the claimant a written warning for her absence. The employer was unkind to the claimant who was suffering from medical problems after the death of a family member. The claimant called the employer a "fucking cunt" and "fucking bitch". On January 21, 2011, the employer terminated the claimant for calling her names.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). It is not misconduct for an individual to use vulgar language where vulgar language is commonly used. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**AMENDED DECISION:**

The representative's February 23, 2011 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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