

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN C HERNANDEZ
Claimant

APPEAL NO. 08A-UI-11616-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**J & M PARTNERSHIP
MCDONALDS**
Employer

OC: 11/16/08 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

J & M Partnership, doing business as McDonalds, filed a timely appeal from an unemployment insurance decision dated December 9, 2008, reference 01, that allowed benefits to Juan C. Hernandez. Due notice was issued for a telephone hearing to be held December 29, 2008. The claimant did not respond to the hearing notice. The employer provided the name and telephone number of a witness. However, when that number was called at the time of the hearing, there was no answer. After waiting 15 minutes past the scheduled time of the hearing, the administrative law judge closed the record.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Juan C. Hernandez was employed by J & M Partnership, doing business as McDonalds from October 13, 2005 until he was discharged on or about November 10, 2008. Manager Larry Freyberger discharged Mr. Hernandez on November 10, 2008 for allegedly laughing behind his back. Mr. Hernandez had not done so.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct. It does not.

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. See Iowa Code section 96.6-2. Mr. Freyberger's fact-finding statement was that Mr. Hernandez voluntarily quit after being reprimanded. The claimant's fact-finding statement contradicted this. Furthermore, the employer's protest form also contradicted Mr. Freyberger's statement. The most consistent evidence in this record is Mr. Hernandez's statement that he had not laughed at Mr. Freyberger behind his back and that Mr. Freyberger had discharged him. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated December 9, 2008, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

css/css