

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATIE KRANZ**  
Claimant

**APPEAL NO. 13A-UI-10157-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WILLOWBROOK FOOD INC  
MCDONALD'S RESTAURANT**  
Employer

**OC: 08/04/13  
Claimant: Respondent (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

McDonald's Restaurant (employer) appealed an unemployment insurance decision dated August 28, 2013, reference 01, which held that Katie Kranz (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 2, 2013. The claimant participated in the hearing. The employer participated through Vickie Piper, Store Manager and Pam Diekhuis, First Assistant Manager. Employer's Exhibits One through Three were admitted into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for work-related misconduct.

**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 employed as a part-time crew trainer working full-time hours from June 21, 2007 through August 19, 2013 when she was discharged for violation of company policy. She received training on the employer's cell phone policy and knew that she could not use her cell phone while working. In addition to numerous verbal warnings, a final written warning was issued to her on August 5, 2013. The claimant was discharged on August 8, 2013 after she was caught using her cell phone at work on August 5, 2013.

The claimant filed a claim for unemployment insurance benefits effective August 4, 2013 and has received benefits after the separation from employment.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code

§ 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on August 8, 2013 after violating a final warning by using her cell phone while working. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. Benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, a waiver cannot be considered because both parties participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount of \$338.00.

**DECISION:**

The unemployment insurance decision dated August 28, 2013, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$338.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css