

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMIKA L ANDERSON
Claimant

APPEAL NO. 09A-UI-03828-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**“JFB CORPORATION
“BURGER KING**
Employer

**OC: 02/01/09
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 3, 2009, reference 01, that found claimant eligible for unemployment insurance benefits. After due notice a telephone conference hearing was scheduled for and held on April 6, 2009. Although duly notified Ms. Anderson did not participate. The employer participated by Joyce Johannesen, Manager, and Jenny Pint, Assistant Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, finds: The claimant was most recently employed as a part-time crew person for this employer until January 31, 2009 when she was discharged for intentional violation of a known company rule after being warned.

Ms. Anderson was discharged when she violated the company's direct notification rule by calling in an impending absence at a time when the claimant knew management personnel would not be present. The claimant had been specifically informed of the company policy which required employees to personally contact the company management or a senior management person to report any impending absences. The claimant had also been specifically warned for violating this policy and had also been suspended for violating the policy. During the early morning hours at approximately 2:00 a.m. on January 31st, the claimant called in to report that she would not be coming to work the following morning. Ms. Anderson left no reason. The claimant was specifically told by individuals who were on duty that she must personally contact the manager. Ms. Anderson once again did not do so. Based upon the repetitive nature of the claimant's failure to follow the established policy, a decision was made to terminate

Ms. Anderson from her employment. The previous day the claimant had challenged the employer to discharge her.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for conduct sufficient to warrant a denial of unemployment insurance benefits. It does.

The evidence in the record clearly establishes that the claimant had been repeatedly warned and suspended for violating the company's established policy which requires employees to personally notify a manager or senior management person of impending absences. Based upon the repetitive nature of the claimant's violation of this policy after being warned and suspended, the administrative law judge concludes that the claimant intentionally violated the employer rule and was discharged for misconduct in connection with her employment.

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.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault,

the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated March 3, 2009, reference 01, is reversed. Tamika Anderson is disqualified and benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided that she is otherwise eligible. The issue of whether the claimant must repay the unemployment insurance benefits is remanded to UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs