

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GWENDOLYN MURRAY
Claimant

APPEAL NO. 13A-UI-13988-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURGER KING
Employer

OC: 11/10/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Gwendolyn Murray (claimant) appealed an unemployment insurance decision dated December 11, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Burger King (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 14, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Controller Kathy Frerichs and Derek Wheeler, District Manager.

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 employee from August 5, 2013 through November 1, 2013 when she was discharged for theft. Theft is grounds for immediate dismissal. The claimant arrived ten minutes late for work on October 29, 2013 and asked a co-worker who the manager was that morning. The breakfast supervisor heard a co-worker tell the claimant it was Matt McNamara but said he was at the bank. The supervisor observed the claimant go to the kitchen and make a breakfast sandwich. She took the sandwich out the kitchen door and gave it to a woman who was waiting outside the door. The claimant then returned to work in the kitchen.

The supervisor notified the manager when he returned and he contacted District Manager Derek Wheeler as to what he had been told. Mr. Wheeler has the capacity to review the surveillance recordings remotely and after he reviewed the surveillance recording, he confirmed the claimant had made a breakfast sandwich and gave it away to a woman. He subsequently emailed the information to Mr. McNamara and the claimant was discharged on the following day for theft.

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 November 1, 2013 for theft. The claimant's theft shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated December 11, 2013, reference 01, is affirmed. 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css