

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMARA CANFIELD**  
Claimant

**APPEAL NO: 09A-UI-06043-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MCSOIFER'S INC**  
Employer

**OC: 03/15/09**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Tamara Canfield (claimant) appealed an unemployment insurance decision dated April 7, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from McSoifer's, Inc. (employer), doing business as McDonalds, for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 14, 2009. The hearing was consolidated with Appeal Number 09A-UI-06065-BT since both claimants were discharged from the same policy violation. The claimant participated in the hearing. Claimant Richard Bartels also participated in the hearing. The employer participated through owner Sam Soifer Restaurant Manager Pam Schmidtke, Assistant Manager Amy Feehrer, and crew members Brittney Harr and Lorna Barker. Employer's Exhibits One through Four were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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 full-time from November 24, 1997 through March 13, 2009. She was hired as a crew member, was promoted to a floor supervisor and was working as a breakfast manager at the time she was discharged. The employer has a policy that prohibits management employees from having a relationship with an employee he or she supervises.

Richard Bartels was a maintenance employee and the claimant was his supervisor during the morning shifts, since she supervises all employees on that shift. Restaurant Manager Pam Schmidtke suspected the claimant was having a relationship with Mr. Bartels in April 2008 and she asked the claimant about this. The claimant denied the claim and stated that the two were just close friends. Ms. Schmidtke reminded the claimant that crew and management do not mix and that there is a fine line to which the claimant was close to crossing.

Crew member Brittney Harr was taking something back to the cooler door on March 11, 2009 at approximately 10:45 a.m. She heard the claimant and Mr. Bartels fighting so she put her stuff down and went to get Assistant Manager Amy Feehrer. Both Ms. Harr and Ms. Feehrer went to the back but it was quiet; Ms. Harr opened the cooler door and both employees saw the claimant and Mr. Bartels were kissing. Ms. Harr and Ms. Feehrer left but Ms. Harr returned to the freezer again at approximately 10:55 a.m. and again saw the claimant and Mr. Bartels kissing, but the claimant now had her arms around Mr. Bartels. Ms. Harr went up to Ms. Feehrer and said, "Yuck" and then reported the incident to Ms. Feehrer. Ms. Harr indicated that it was not the first time she had seen the couple kissing. Crew member Lorna Barker also witnessed the claimant and Mr. Bartels kissing in the cooler when she went back to get salad mix. She saw the claimant had her arms around Mr. Bartels' neck but Mr. Bartels hands were down at his side.

The employer met with management on March 12, 2009 and decided the policy violation was so serious that it warranted discharge. The claimant was discharged on March 13, 2009 but Mr. Bartels was on vacation so he was not discharged until he returned from vacation on March 23, 2009.

#### **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.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer has a policy prohibiting a member of management from having a relationship with an employee the manager supervises. The employer's policy is a reasonable one, designed to avoid issues of preferential treatment and sexual harassment. The claimant admits having a relationship with Mr. Bartels but denies she was kissing him in the cooler on March 11, 2009. She contends that she is not a member of management but that contention is completely without merit. The claimant's actions were volitional and she clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's conduct also shows 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 April 7, 2009, 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.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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