

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTINA R WEBER**  
Claimant

**APPEAL NO. 14A-UI-03388-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KPTOO INC**  
Employer

**OC: 03/02/14**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated March 25, 2014, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on April 21, 2014, by telephone conference call. The claimant participated personally. Employer participated by Carol Grause, store manager. The record consists of the testimony of Carol Grause; the testimony of Kristina Weber; and Employer's Exhibits 1-5.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a McDonald's restaurant located in Sioux City, Iowa. The claimant was hired on April 7, 2010. Her last day of work was March 3, 2014. She was terminated on March 6, 2014. At the time of her termination the claimant was a member of management.

The incident that led to the claimant's termination occurred in early to mid June of 2013. The claimant was working as a manger and she and two other employees were closing the store for the night. The other employees, young men, used a hose on the claimant and soaked her t-shirt. They also took her work shirts. As a result, the claimant worked without a shirt on. The other employees then took off their shirts and tried to coerce the claimant. They took away her cell phone. The claimant finally got control of the situation and was able to get her shirts back. She did not report this incident to the store manager.

The store manager found out about the incident on February 28, 2014. One of the employees involved in the hose incident left work early. He told the claimant that if she wrote him about leaving, he would tell the manager what happened the previous summer. The claimant then went to the manager and reported the incident that had occurred the previous summer. This

self-reporting led to an investigation. The employer found “inappropriate behavior” on the claimant’s part. The employer believed that she did not have control of her shift. The claimant was terminated for her failure to properly handle the incident back in June 2013.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker’s duty to the employer. The legal definition of misconduct excludes unsatisfactory job performance or errors of judgment in isolated instances. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The evidence showed that the claimant was involved in what can be termed “horseplay” sometime in June 2013. The claimant did not start the horseplay. Two other employees used a hose to soak the claimant. This led her to take off her shirt and prompted the two employees to take off their shirts. The claimant’s work shirts were taken from her as well as her cell phone. The claimant admitted that she did not handle this situation well. The claimant did regain control of the situation and was able to get her shirts back. The administrative law judge concludes that the claimant was discharged for her failure to properly control her shift, which is a matter of job performance. The claimant made an error of judgment on how she handled the horseplay. But she clearly did not initiate

the horseplay. There is no evidence that the claimant had been disciplined for conduct like this in the past. Since there is insufficient evidence of disqualifying misconduct, benefits will be allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated March 25, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs