

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE M KROES
Claimant

APPEAL NO. 11A-UI-03827-M2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARDEES FOOD SYSTEMS INC
Employer

OC: 01/09/11
Claimant: Respondent (4-R)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The alleged employer filed an appeal from a decision of a representative dated March 15, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 15, 2011. Employer participated. Claimant failed to respond to the hearing notice and did not participate.

ISSUE:

The issues in this matter are whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant never worked for Hardees Food Systems, Inc. The Hardees stores in Iowa are independent franchises responsible for their own unemployment claims. No wage credits for Hardees Food Systems, Inc. show in agency records. Wage credits are from Frauenshuh Hospitality Group and Westar Foods, Inc.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.19-18-g(6) provides:

g. The term "employment" shall not include:

(6) Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university or by the spouse of such student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution, which combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, except that this subparagraph does not apply to service performed in a program established for or on behalf of an employer or group of employers.

Service performed in the employ of a hospital if such service is performed by a patient of the hospital.

Iowa Code section 96.19-16 provides:

16. "Employer" means:

a. For purposes of this chapter with respect to any calendar year after December 31, 1971, any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more excluding wages paid for domestic service or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment at least one individual irrespective of whether the same individual was in employment in each such day. An employing unit treated as a domestic service employer shall not be treated as an employer with respect to wages paid for service other than domestic service unless such employing unit is treated as an employer under this paragraph or as an agricultural labor employer.

b. Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade, or business, or substantially all of the assets thereof, of another employing unit which at the time of such acquisition was an employer subject to this chapter, or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to this chapter. Provided, that such other employing unit would have been an employer under paragraph "a" of this subsection, if such part had constituted its entire organization, trade, or business.

c. Any employing unit which acquired the organization, trade, or business, or substantially all the assets of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph "a" of this subsection.

d. Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit, would be an employer under paragraph "a" of this subsection.

The claimant was never an employee of this employer, so the actual employer has received no notice of claim.

DECISION:

The decision of the representative dated March 15, 2011, reference 01, is modified. The employer's account shall not be charged, as the claimant was never an employee of the employer. This matter is remanded to the Claims Section for a determination of who the employer is, and a fact-finding on the separation.

Stan McElderry
Administrative Law Judge

Decision Dated and Mailed

srm/kjw