

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA L ANDERSON
Claimant

APPEAL NO. 08A-UI-02358-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FMC/MARC INC
ARBY'S
Employer

OC: 02/10/08 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Linda L. Anderson (claimant) appealed a representative's March 6, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from FMC/MARC, Inc. / Arby's (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 25, 2008. The claimant participated in the hearing. Jennifer Coe of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, John Kirsch and Dan Kenne. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 13, 2005. She worked part time (approximately 36 hours per week) as a crew trainer at the employer's Newton, Iowa, restaurant. Her last day of work was February 12, 2008. The employer discharged her on February 13, 2008. The stated reason for the discharge was having a poor attitude toward work duties which she displayed inappropriately.

The final incident was on February 10; the claimant had been training a new employee. While that new employee was still present, the claimant was directed to take care of filtering the fryers. She began complaining that it was not her job, why did she have to do it. While the claimant ultimately did do the task, the employer determined this was a poor attitude to display before a new employee, particularly given the prior discussions with the claimant.

The employer had given the claimant a written warning on September 18, 2007 for having a poor attitude and being argumentative about doing her job as instructed. She was given a verbal warning in December 2007 for refusing to work on the back line as directed. On

February 9, 2008, Mr. Kirsch, the unit director, had instructed the claimant to mop the kitchen before leaving. The claimant complained, asking why it was always her who had to mop the kitchen, and Mr. Kirsch again admonished her about her attitude. When the event before the new employee happened only a day later, Mr. Kirsch determined to pursue termination.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); 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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or

- b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra.

While the claimant denied that she had received any prior warnings, written or verbal, and further denied that she had exhibited a poor attitude about assigned work, in addition to Mr. Kirsch's first-hand testimony that he had given the claimant the warnings and observed her complaints, Mr. Kenne, the district manager, confirmed that Mr. Kirsch had previously reported and discussed the claimant's conduct and prior warnings with him. As reflected in the above findings of fact, the administrative law judge finds the employer's version of events to be more credible. The claimant's continued displays of poor attitude toward work assignments after prior warning, particularly when displayed before a new employee, 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. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's March 6, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 12, 2008. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css