

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TOBY L SWAIM**  
Claimant

**APPEAL NO. 13A-UI-05611-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEATON INC**  
Employer

**OC: 04/07/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated May 1, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was held on June 17, 2013. The claimant participated personally. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Toby Swaim.

**ISSUE:**

Whether the claimant was separated from his employment for any disqualifying reason.

**FINDINGS OF FACT:**

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

The employer operates a Burger King restaurant in Muscatine, Iowa. The claimant was hired on July 31, 2012. He worked a split shift as the "cleaner." He was a full-time employee. The claimant's last day of work was March 22, 2012. The claimant was taken off the schedule after he worked the morning shift. The claimant was on a work release and when he returned to the jail, he was told that the employer had called the jail and he was terminated.

**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.

The claimant is eligible for unemployment insurance benefits provided he meets all other eligibility requirements. The claimant testified that he was taken off the schedule after he worked the morning hours of his split shift on March 22, 2012. The employer also called the jail to report that the claimant was terminated. The claimant was on a work release at the time. The claimant has no idea why he was terminated. The employer did not participate in the hearing and there is no evidence of disqualifying misconduct. Benefits are allowed if the claimant meets all eligibility requirements.

**DECISION:**

The decision of the representative dated May 1, 2013, reference 01, is reversed. Unemployment insurance benefits are 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