

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETTIE A JOHNSON
Claimant

APPEAL NO: 07A-UI-02883-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARDEES FOOD SYSTEMS INC
Employer

OC: 02/11/07 R: 03
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Hardees Food Systems, Inc. (employer) appealed a representative's March 8, 2007 decision (reference 01) that concluded Bettie A. Johnson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 6, 2007. The claimant participated in the hearing. Cindy Waddell, the general manager, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Four were offered and admitted as 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.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked about eight years for the employer. The claimant worked as a full-time shift leader. When the claimant started working, she received information about the employer's attendance policy which informed employees they could be discharged if they were repeatedly late for work. Waddell started noticing problems with the claimant's dependability when she started reporting to work late in early July 2006. The claimant reported to work late about once a month until December 2006.

The claimant was late for work on December 13 and 15, 2006. In January 2007, the claimant was again late for work, but Waddell did not say anything to her because she understood the claimant was trying to resolve some family issues.

On February 2, the claimant called the employer at work at 7:05 a.m. and asked what time she was scheduled to work. The claimant indicated she thought she was scheduled to work at 9:00 a.m. even though she was always scheduled to work at either 7:00 a.m. or 8:00 a.m. The claimant was scheduled to work at 7:00 a.m. on February 2. When the claimant reported to work at 7:28 a.m., the employer gave her a written warning. The warning informed the claimant that if she continued to report to work late, she could be demoted or terminated. (Employer Exhibit Two.)

On February 14, the claimant reported to work at 7:45 a.m. even though she was scheduled to work at 7:00 a.m. The claimant told the employer she thought she was scheduled at 8:00 a.m. The schedule showed the claimant was to start work at 7:00 a.m. (Employer Exhibit One.) Waddell expressed frustration that the claimant, member of the management team, was repeatedly reporting to work late. Waddell told the claimant to go home and think about whether she wanted to continue to be part of management. If the claimant did, she needed to report back that afternoon for the manager's meeting at 2:30 p.m. The time of the manager's meeting was noted on the weekly schedule. (Employer Exhibit One.) The claimant did not look at the schedule when she left work.

The claimant assumed the meeting was at 3:00 p.m. and reported for the manager's meeting at 2:45 p.m. The employer discharged the claimant because for the second time on February 14, 2007, she reported to work late.

The claimant established a claim for unemployment insurance benefits during the week of February 11, 2007. The claimant filed claims for the weeks ending March 3 and 10. The benefit amount of \$333.00 was used by the Department to offset a previously established overpayment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant should have realized her job was in jeopardy when she received the February 2, 2007 written warning and when she was sent home on February 14, 2007. The only reason the claimant received the warning and was sent home was because she continued to report to work late. As a member of the management team, the claimant was held to a higher standard than employees who were not part of management. In light of the warning and being sent home early, the claimant's failure to verify the time of the manager's meeting and to report to the meeting on time amounts to an intentional and substantial disregard of the standard of behavior the employer had a right to expect of a management team member. The employer discharged the claimant for reasons constituting work-connected misconduct. As of February 11, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the

overpayment. Iowa Code section 96.3-7. During the weeks ending March 3 and 10, 2007, the claimant is not legally entitled to receive or have any benefits used to offset a previously established overpayment. The claimant has been overpaid \$333.00 in benefits the Department used to offset a previously established overpayment.

DECISION:

The representative's March 8, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 11, 2007. This disqualification continues until she 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. The claimant is not legally entitled to receive benefits for the weeks ending March 3 and 10, 2007. Benefits attributed to the weeks ending March 3 and 10 were used to offset a previously established overpayment. Since the claimant was not legally entitled to receive benefits for these weeks, she had been overpaid and must repay a total of \$333.00 in benefits attributed to her for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs