

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LITISHA M MONDIE
Claimant

APPEAL NO. 11A-UI-09348-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

D OF S FOODS INC
Employer

**OC: 06/19/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Litisha M. Mondie filed a timely appeal from an unemployment insurance decision dated July 15, 2011, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held August 8, 2011, with Ms. Mondie participating. The employer did not provide the name and telephone number of a witness.

ISSUE:

Was the claimant discharged for misconduct?

FINDINGS OF FACT:

Litisha Mondie was employed as a cashier at McDonald's #11386, owned and operated by D of S Foods, Inc., from April of 2010 until she was discharged June 18, 2011. A secret shopper had reported that Ms. Mondie failed to greet him or give him a receipt at the drive-thru window. Ms. Mondie always greets and gives receipts to customers. She may not greet a customer immediately upon arriving at the drive-thru window because of taking another order over her headset.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for disqualifying misconduct. It does not.

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 employer has the burden of proof. See Iowa Code section 96.6-2. As noted above, the employer did not participate in the hearing. It did not contradict the claimant's version of the incident leading to discharge. The administrative law judge finds sworn testimony to be more credible than unverified documentation from an anonymous source.

DECISION:

The unemployment insurance decision dated July 15, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw