

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 04A-UI-01690-DWT
OC 01/04/04 R 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

HOLLY M HICKMAN
502 – 6TH AVE
CHARLES CITY IA 50616

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

HARDEES FOOD SYSTEMS INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Hardees Food Systems, Inc. (employer) appealed a representative's February 4, 2004 decision (reference 01) that concluded Holly M. Hickman (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 8, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Keith Earle, the general manager, and Karen Cassemeyer testified on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Since December 2000 the claimant has worked at various times for the employer. Most recently, the claimant worked for the employer from July 16 through December 18, 2003. The claimant worked as a full-time shift leader. Earle was her supervisor. The employer's policy indicates an employee will be discharged if the employee receives three written warnings within a specified time.

On December 12, 2003, the employer gave the claimant a written warning for taking soiled napkins out of the trash on December 11 and putting them in with the employer's clean napkins. The employer discovered the soiled napkins on December 12 when people were going through drive through. The employer's camera taped the claimant doing this on December 11.

On December 14, the claimant received her second written warning for giving a person who did not work for the employer free food. The employer's security camera recorded the claimant doing this on December 13.

On December 18, the claimant was scheduled to work at 11:00 a.m. She reported to work but did not clock in until noon. A shift supervisor asked her to clock in as scheduled because the employer was very busy. The claimant refused to clock in for work until noon. The employer gave the claimant her third written warning on December 18 for failing to clock in as scheduled and for refusing to clock in as directed.

The supervisor on duty on December 18 did not have any hiring or firing authority. He contacted Earle. Earle confirmed that if the accounts of the incidents on December 11, 13 and 18 were accurate or substantiated, the claimant would be discharged. Initially, the claimant was to be suspended until Earle could meet with everyone on December 23.

The claimant contacted Earle after the supervisor on duty had talked to him. She gave a different version of the events. When the two stories contradicted one another, Earle told the claimant they would all meet on Tuesday, December 23, to discuss what had happened. Earle also told the claimant she would be allowed to work until the December 23 meeting. If, however, the allegations against her were true, the employer would discharge her.

The claimant was scheduled to work on December 19. The claimant did not report to work or notify the employer she was unable to work. About 90 minutes after she was scheduled to work, the employer contacted the claimant. She indicated she was not going to go to work anymore because she considered herself discharged.

The claimant established a claim for unemployment insurance benefits during the week of January 4, 2004. She filed claims for the weeks ending January 10 through February 14, 2004. She received her maximum weekly benefit amount of \$145.00 each week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The claimant actually quit on December 19 when she decided she would not return work. By doing this the claimant made the decision she did not want to present her version of the incidents to Earle. The employer had not made a decision concerning the claimant's continued employment as of December 19 because Earle planned to wait to see what the parties involved said on December 23, 2003. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant has voluntarily quit without good cause when she quits after being reprimanded. 871 IAC 24.25(28). The claimant may have had compelling reasons for quitting and she knew she would be discharged if Earle concluded she had conducted herself in the way her co-workers had reported. The employer, however, never had the opportunity to meet with the claimant and her co-workers to make such a decision. The claimant quit for reasons that do not qualify her to receive unemployment insurance benefits.

In the alternative, if the employer discharged the claimant. The claimant's conduct on December 11, 13 and 18 amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect. The claimant committed work-connected misconduct. 871 IAC 24.32(1)(a). Under either scenario the claimant is not qualified to receive unemployment insurance benefits as of January 4, 2004.

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 §96.3-7. The claimant is not qualified to receive unemployment insurance benefits during the weeks ending January 10 through February 14, 2004. She has been overpaid a total of \$870.00 in benefits she received for these weeks.

DECISION:

A representative's February 4, 2004 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of January 4, 2004. 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 unemployment insurance benefits during the weeks ending January 10 through February 14, 2004. The claimant has been overpaid a total of \$870.00 in benefits she received for these weeks.

dlw/b