

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRUCE L MCAFEE

Claimant

BROWN CUSTOMER DELIGHT GROUP INC

Employer

APPEAL 14A-UI-12914-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/16/14

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 15, 2014, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 16, 2015. Claimant participated and was represented by Beatriz Mate-Kodjo, Attorney at Law. Employer opted not to participate according to a letter from its agent Employers Unity. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a director of operations from July 15, 2013, paid \$100,000.00 per year and was separated from employment on November 19, 2014, when he was discharged. He has worked for McDonalds for 29 years before transferring from Tennessee to Des Moines and had received numerous awards for service and performance and did his job to the best of his ability. Owner Larry Brown told him he was discharged because of failure to meet company goals for sales and transactions counts, food costs, labor, profitability and people (the count was too low and too few Hamburger University graduates were employed). He had not been given specific goals to meet prior to the separation and the employer had not previously warned claimant his job was in jeopardy for any similar reasons. He had no prior job performance reviews prior to the performance improvement plan in September 2014. After complaining to the employer in July 2014, claimant filed an Iowa Civil Rights Commission complaint against the employer on August 18, 2014, complaining about the employer's reference to those in the Gay community as "bootie busters" and for frequent use of the "N" word. At the separation meeting, Brown presented a non-disclosure agreement, told claimant if he signed it and quit, Brown would keep him on the payroll for a while and then would release him to look for other jobs. If he did not quit Brown told him he would be terminated. Claimant declined to quit and was discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential

liability for unemployment insurance benefits related to that separation. The employer had not previously warned claimant about the alleged issues leading to the separation, and has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Given the timing of the civil rights complaint followed by the performance improvement plan and termination without set goals or warning, the reason for the discharge appears to be pretextual.

DECISION:

The December 15, 2014, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs