

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER M WHITE
Claimant

APPEAL NO. 08A-UI-05331-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ACE INTERNATIONAL INC
BURGER KING**
Employer

**OC: 05/11/08 R: 02
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Burger King, filed an appeal from a decision dated June 2, 2008, reference 01. The decision allowed benefits to the claimant, Heather White. After due notice was issued, a hearing was held by telephone conference call on June 18, 2008. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by District Manager Janelle Vickers, Manager Leah Sorenson, and Trainer Lorna Lowe.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Heather White was employed by Burger King from September 25, 2007 until May 8, 2008, as a full-time crew worker. During the course of her employment, Manager Leah Sorenson had to send her home early on several occasions due to her conduct. She would become insolent, insubordinate, loud and aggressive to the manager and other employees.

On May 7, 2008, she was arguing with a customer at the drive up window. Ms. White told the customer she could not have the meal as she had ordered and at one point told the customer to “shut up.” Ms. Sorenson intervened and sent to the claimant to work in the kitchen and had someone else take over the drive up window. However, Ms. White refused to go to the kitchen and went instead to the bathroom for about five minutes and was then up at the front of the store. The manager again told her to go to the kitchen at which point the claimant told her “this is fucking bullshit” and called Ms. Sorenson a “bitch.” She was sent home immediately.

District Manager Janelle Vickers was notified and called the claimant, who then asserted she had been pushed and shoved by Ms. Sorenson. Ms. Vickers viewed the surveillance video tape and did not see Ms. Sorenson touch the claimant in any manner. When the district manager

spoke with the claimant again later that day, she said she had seen the video and had not witnessed any aggressive behavior by the manager, and the claimant's only response was, "Whatever!" At that point, Ms. Vickers told the claimant she was fired.

Heather White has received unemployment benefits since filing a claim with an effective date of May 11, 2008.

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 had been disciplined in the past for inappropriate behavior in the workplace. Her discharge was precipitated by another incident of being rude to customers, insubordinate to her supervisor, and abusive to other employees. In addition, she made false accusations against the manager, apparently to excuse her own behavior. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of June 2, 2008, reference 01, is reversed. Heather White is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$306.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw