

**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**

**JUDY R DAVIS
PO BOX 101
ALBION IA 50005**

**CENTRAL IOWA KFC INC
PO BOX 269
COLUMBUS JUNCTION IA 52738-0269**

**Appeal Number: 05A-UI-01215-CT
OC: 01/02/05 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.

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 is based.

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(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Central Iowa KFC, Inc. (KFC) filed an appeal from a representative's decision dated January 24, 2005, reference 01, which held that no disqualification would be imposed regarding Judy Davis' separation from employment. After due notice was issued, a hearing was held by telephone on February 21, 2005. Ms. Davis participated personally and offered additional testimony from Leila Davis. The employer participated by Mike O'Connor, Area Supervisor.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Davis was employed by KFC from March 28 until November 15, 2004 as a part-time crewmember. She worked from 20 to 25 hours each week. On November 14, Ms. Davis' mother went to her home to take her to work. Ms. Davis was too ill to work but did not have a home telephone. She had her mother call the employer prior to the start of her shift to report that she would be absent. The mother spoke to the manager to report the absence.

Ms. Davis returned to work on November 15. She was presented with a written warning which stated that she had failed to report her absence of November 14. Ms. Davis refused to sign the warning because her absence had been reported. The warning contained an area for Ms. Davis to write comments, but she chose not to. The warning form indicated that the signature was only to acknowledge that the warning was presented to the employee. Ms. Davis continued to refuse to sign the warning even when told that she would be fired if she did not. She had three opportunities to sign the form but chose not to. Because of her refusal, she was discharged from the employment. The refusal to sign the warning was the sole reason for the discharge.

Ms. Davis has been paid a total of \$612.00 in job insurance benefits since filing her claim effective January 2, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Davis was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Davis was discharged because she refused to sign a written warning on November 15. Her refusal was based on the fact that the warning was incorrect with respect to her absence of November 14. The absence had, in fact, been reported to the employer by Ms. Davis' mother. The administrative law judge appreciates that Ms. Davis disagreed with the warning. However, there was a place on the form for her to note her disagreement and to write her version of the event. Moreover, the form does not state that the employee's signature will be considered agreement with the employer's versions of the facts. Ms. Davis could have utilized the chain of command to protest the warning. She was clearly on notice that her refusal to acknowledge receipt of the warning was considered insubordination and could result in her discharge. Her continued refusal to sign the warning under the circumstances presented constituted misconduct as a matter of law. Green v. Iowa Department of Job Service, 299 N.W.2d 651 (Iowa 1980). The employer had the right to maintain a record that the issue had been addressed with Ms. Davis even if she disagreed with the merits of the warning. For the above reasons, benefits are denied.

Ms. Davis has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated January 24, 2005, reference 01, is hereby reversed. Ms. Davis was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Davis has been overpaid \$612.00 in job insurance benefits.

cfc/sc