

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLENE C SMITH
Claimant

APPEAL NO: 12O-UI-04056-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MCDONALDS RESTAURANTS OF
IOWA INC**
Employer

**OC: 12/11/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated January 13, 2012, reference 01, that held the claimant was not discharged for misconduct on December 15, 2011, and benefits are allowed. An ALJ reversed the decision and it was appealed to the Employment Appeal Board (EAB). The Board remanded the matter for a new hearing on April 13, 2012.

A telephone hearing was held on May 17, 2012. The claimant did not participate. Jennifer Betts, GM, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on March 14, 2008. She was promoted to a full-time floor supervisor position and last worked for the employer on December 15, 2011. She received the employer policies for a floor supervisor that includes cash handling and controls. The policy prohibits leaving bank deposits unattended or not taking them to the bank, especially if this behavior leads to a loss of cash. This violation is considered serious and may result in suspension but the employer reserves the right to escalate the disciplinary action.

The employer began experiencing some cash shortages so the GM began reviewing the store video to see if it could find any issue. She noted when claimant finished preparing the bank deposit, claimant put it in the proper bank bag but then put it in desk drawer in the office rather than placing it in the store safe on four occasions: December 5, 12, 13, and 14.

The GM discharged claimant on December 15 for violating the cash handling and control policy. The employer considered claimant was given a warning this could happen when she signed for the policy though it had not issued an independent warning prior to termination.

Claimant failed to respond to the hearing notice.

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on December 15, 2012.

Issuing a policy is not the same as issuing a disciplinary warning. The employer had a cash shortage problem and blamed claimant's failure to put the bank deposit bag in a safe as the reason for it. The employer witness offered no testimony that any person took cash from the desk drawer where claimant placed the deposit bag on four occasions, and the employer policy does not state it must be placed in a safe. The employer failed to offer a convincing circumstance why claimant was escalated the claimant's conduct from suspension to discharge, especially since she had not received a warning.

DECISION:

The department decision dated January 13, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct on December 15, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css