

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON K ROSEMEYER

Claimant

APPEAL NO. 09A-UI-05451-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MONGOOSE INC

MCDONALD'S RESTAURANT

Employer

OC: 03/08/09

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 27, 2009, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on June 29, 2009. Claimant participated and was represented by Dennis McElwain, Attorney at Law. Employer participated through Steve Gossage, owner. Claimant's Exhibit A was admitted to the record.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time (30 to 35 hours per week at \$7.50 per hour) as a grill manager since April 2004 and was separated on March 5, 2009. The store had been very busy during the breakfast rush and claimant worked the grill alone (there were normally two others scheduled to work with her). At the end of the rush she had a panic attack. She twice approached assistant manager Tim English crying, shaking and gasping for air; told him she was having a panic attack, could not breathe and asked him if she could take her break. He ignored her and walked away without responding, any other communication, or acknowledgement of her request. He did not tell her that she must wait until after cleaning in preparation for the next rush. Melissa Fiege, coworker and acting manager in English's and manager Janet Dandeu's absence, knew where claimant was going and why. Dandeu and Gossage were not present. Claimant stood outside the back door breathing into a paper bag and returned to her work station 20 minutes later. English came around the corner, saw her, pointed to the door and told her, "Go home" but did not inquire further. Feige called claimant at home later that afternoon and told her she overheard a conversation between Gossage and English indicating she would be fired if she reported for work the next day. She received no calls or messages from Gossage, English or Dandeu asking what had happened or advising her

of her employment status. She turned in her uniforms on payday a week later. Dandeu was aware of her panic disorder.

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.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

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, employer incurs

potential liability for unemployment insurance benefits related to that separation. Since the claimant notified the supervising manager twice of her need to leave because of having a panic attack, her absence was temporary and reasonable, she did not leave the property, and she returned to work immediately after she had recovered, employer 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. Benefits are allowed.

DECISION:

The March 27, 2009, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs