

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA M CARTER
Claimant

APPEAL NO: 10A-UI-16631-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MC DONALD'S
Employer

**OC: 11/07/10
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 30, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Kay Sorenson and Michael Howley were available to testify for her but did not. Jayne Moore, the general manager, Rhonda Fowler, an assistant manager, and Deb Dougherty testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant worked eight years for the employer. She worked as a swing manager.

On October 30, 2010, the employer discovered the claimant's register was \$82.00 short. The employer looked for the missing money, but could not find it. The employer decided to indefinitely suspend the claimant from working on the registers. The employer called and told the claimant the missing money had not been found that she was being suspended indefinitely. The claimant understood she was suspended from working, not just suspended from working on cash registers.

As a result of understanding she was suspended from work, the claimant did not call or report to work on November 2. The claimant did not receive a call from the employer on November 2 when she did not report to work. On November 3, before her scheduled shift, the claimant went to the office to talk to the general manager about being disciplined for the cash shortage. The general manager was not at the office. The claimant was told to go home and wait for his call. The claimant went home, but did not receive a call from the general manager. When the general manager did not call her, the claimant did not call or report to work as scheduled later on November 3.

When the claimant went to pick up her paycheck on November 5, she talked to Moore and asked if she, the claimant, was working on Saturday. Moore told the claimant that after she had not called or reported to work on November 2 and 3, the employer no longer considered her an employee after November 3, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1) & (2)a. Since the claimant went to the work place on November 3 to talk to the manager and was told to go home until he called her, the claimant established that she did not quit.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts indicate the claimant understood she was suspended from working, but on October 31, the employer intended to suspend the claimant from working on cash registers because she had been \$82.00 short on October 30. When the claimant came to work on November 3 to talk to the general manager about the discipline she had received for a cash shortage, she was told to go home and wait for the general manager's call. The claimant did not receive the call and she reasonably believed management would not allow her to work on November 3. Even though the claimant again contacted the employer on November 5, the employer had already decided her employment was over. The evidence indicates there were miscommunication issues. If the claimant had been able to talk to the general manager when she went to the office on November 3, her employment may have continued.

The employer ended the claimant's for business reasons, but the claimant did not intentionally fail to work as scheduled. She may have made an error in judgment when she concluded she had been suspended from work, but she took reasonable steps to talk to the general manager and continue her employment. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of November 7, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's November 30, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of November 7, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css