

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOROTHY J WALKER**  
Claimant

**APPEAL NO. 08A-UI-07693-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PARCO LTD**  
Employer

**OC: 10/28/07 R: 04**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Parco, Ltd. filed an appeal from a representative's decision dated August 22, 2008, reference 04, which held that no disqualification would be imposed regarding Dorothy Walker's separation from employment. After due notice was issued, a hearing was held by telephone on September 9, 2008. The employer participated by Jason Larsen, General Manager. Ms. Walker did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Ms. Walker was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Walker was employed by Parco, Ltd., doing business as Wendy's Old Fashioned Hamburgers, from January 14 until July 15, 2008. She worked approximately 14 hours each week as a crew person. On July 15, she approached the general manager to see if she could go home because of problems she was having with a manager. The general manager questioned her as to the nature of the problem and whether she was the cause. Ms. Walker became upset, said "I'm out of here," and then left the office. When Ms. Walker left the office, the general manager followed her. Ms. Walker said to him, "fuck you" and "fuck this place." These statements were made in the dining room in the presence of employees and customers, some of whom were children. As a result of her statements, the general manager immediately notified Ms. Walker that she was fired. Prior to July 15, the employer had spoken to Ms. Walker on several occasions about the need to get along with and follow instructions of managers.

Ms. Walker filed an additional claim for job insurance benefits effective July 13, 2008. She has received a total of \$527.29 in benefits since filing the additional claim.

**REASONING AND CONCLUSIONS OF LAW:**

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). The administrative law judge concludes that Ms. Walker's conduct in swearing at the general manager and using profanity in front of customers constituted misconduct sufficient to result in the denial of benefits.

Ms. Walker's use of profanity towards the general manager had the potential of undermining his authority as it occurred in the presence of other crew members. Her use of profanity in the presence of customers had the potential of causing customers to not return to the establishment in the future. Ms. Walker knew or should have known that her conduct was contrary to the type of behavior the employer expected. For the above reasons, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Walker has received benefits since filing her additional claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment must be repaid. Iowa Code section 96.3(7). When the overpayment is the result of the reversal of an award of benefits based on a separation issue, it may be waived under certain circumstances. It may be waived if the claimant did not make any fraudulent statements during the fact-finding interview that resulted in the award of benefits and the employer failed to participate in the fact-finding interview. This matter shall be remanded to Claims to determine if Ms. Walker will be required to repay benefits.

**DECISION:**

The representative's decision dated August 22, 2008, reference 04, is hereby reversed. Ms. Walker 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. This matter is remanded to Claims to determine if Ms. Walker will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs