

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STACY M HALE**  
Claimant

**APPEAL NO. 09A-UI-16623-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KASTIM CORPORATION**  
**MCDONALD'S OF FORT DODGE #17678**  
Employer

**Original Claim: 09/27/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Stacy Hale filed a timely appeal from a representative's decision dated October 15, 2009, reference 01, which denied benefits based upon the claimant's separation from Kastim Corporation. After due notice, a hearing was held by telephone on December 10, 2009. The claimant participated personally. The employer participated by Laurie Mullen and Tina Schroeder.

**ISSUE:**

At issue is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Stacy Hale was employed by Kastim Corporation, doing business as McDonald's of Fort Dodge, from August 7, 2008, until September 9, 2009, when she was discharged from employment. Ms. Hale held the position of full-time swing manager and was paid by the hour. Her immediate supervisor was Tina Schroeder, store manager.

The claimant was discharged on September 9, 2009, when it was reported by the company's banking officials that one of two deposit bags that had been deposited on September 8, 2009, had been damaged and approximately \$240.00 was missing.

Ms. Hale was the individual who had deposited the bags in the bank's drop deposit the proceeding night on September 8, 2009. A review of security cameras in the facilities showed Ms. Hale preparing to take the bags for deposit. Security tapes showed no holes, tears, or breaches in the bags at that time. Although Ms. Hale denied any involvement in damaging the bag or misappropriating any funds from the company and had never been warned or counseled for any activity of this nature in the past, a decision nevertheless was made to discharge Ms. Hale from her employment.

At the time that Ms. Hale placed the bags in the depository, they were intact and had no breaches or damage.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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 employer has the burden of proof in establishing disqualifying 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 the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling or unable to furnish evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in this case establishes that Ms. Hale was the management person designated to make deposits on September 8, 2009. Security video tape shows the claimant preparing to take the deposit bags and the tape shows no damage to the bags at that time. The claimant testified

under oath that the bags remained intact and their contents complete at the time that she deposited the bags in the deposit area of the employer's banking institution. Ms. Hale reported to work the next working day, unsuspecting that anything unusual had happened and expecting to work her work shift. Based upon the report by the bank that money was missing and one of the bags had been damaged, the employer concluded that Ms. Hale must have played some part in damaging the bag and/or misappropriating some of the funds.

The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable. The administrative law judge notes that the claimant had not been previously warned or counseled for any issues relating to theft, misappropriation, or dishonesty in any manner.

While it is understandable that the employer might feel it necessary for business reasons to separate the individual who last had contact with the banking bags within their organization, the administrative law judge concludes that the evidence is not sufficient to establish the claimant's involvement in the misappropriation so as to warrant the denial of unemployment insurance benefits. Benefits are allowed.

**DECISION:**

The representative's decision dated October 15, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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