

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH MCNEES

Claimant

APPEAL NO. 07A-UI-07202-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALDS RESTAURANT

Employer

**OC: 07-01-07 R: 01
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 23, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 28, 2007. The claimant participated in the hearing. Chad Miller, Store Manager and Erin Barr, Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time assistant manager for McDonalds from August 15, 2005 to May 23, 2007. On March 29, 2007, Store Manager Chad Miller returned to the store after working all day and as he entered the building he overheard the claimant saying, "Yeah, I had no idea he was going to be here so long either" and Mr. Miller felt the tone of her voice was hostile toward him and his being there all day (Employer's Exhibit Two). On April 4, 2007, two crew members reported to Mr. Miller that the claimant was making negative comments about him in front of them and other crew members (Employer's Exhibit Two). Mr. Miller had made "on the spot corrections due to procedures not being followed" and the claimant consistently redirected the crew to return to the improper techniques (Employer's Exhibit Two). On April 9, 2007, Mr. Miller noted that the claimant made sexist remarks to him and others that she felt the owners were sexist in hiring a male as store manager "since this store can only be ran by a woman" (Employer's Exhibit Two). Mr. Miller informed her that the employer had seven other stores and the majority were managed by women (Employer's Exhibit Two). On April 22, 2007, Mr. Miller asked the claimant's opinion about the possible hiring of a black employee as a store manager and the claimant said, "People in Clarinda or around here would complain about him and would not like him because he is black" (Employer's Exhibit Two). Mr. Miller stated he did not believe that to be true and felt her statement was racist in nature (Employer's Exhibit Two).

On April 25, 2007, Mr. Miller spent from 4:00 a.m. until around 8:30 p.m. cleaning because a new field consultant was coming to visit the store. When he left the store he left instructions on what still needed to be finished before the claimant and her closing team left. The list was not completed and the claimant did not notify Mr. Miller she had not completed the tasks so consequently he did not come in early to finish but when he did arrive he noticed the lobby was still dirty with trays on the table and food on the floor. The claimant said she told her crew to perform the cleaning jobs but admitted she did not follow up to make sure they were done. On May 11, 2007, the store had help from two managers from other restaurants in the area. The claimant was scheduled to work 10:00 a.m. to 7:00 p.m. but left early and did not help with the running of the shift after Mr. Miller left and then left at 5:45 p.m. without permission to do so. On May 16, 2007, a crew member told Mr. Miller that the claimant continued to "bad mouth" Mr. Miller and other managers that had come to help at the store (Employer's Exhibit Two). The crew member also said the claimant commented that she "hates those Nebraska City assholes" that they send here thinking they are going to clean up this store" (Employer's Exhibit Two). The crew member further stated that the claimant had been "promo or manager "mealing" food for friends or employee meals or discounts" in violation of the employer's policy (Employer's Exhibit Two). On May 20, 2007, the claimant called Mr. Miller around 3:15 p.m. to update him on the status of the day and discuss staffing for the night shift (Employer's Exhibit Two). She expressed concern about picking the truck order because it was due at 7:00 a.m. May 21, 2007, and had been told it was her responsibility to complete that task before going home. She did not complete the order. On May 21, 2007, three employees witnessed the claimant throw a plastic coffee filter holder to the front counter, nearly hitting another manager and used profanity that customers could overhear (Employer's Exhibit Two). It was also reported that a customer came in to complain about an order and the claimant "literally dismissed" him by telling him to talk to Mr. Miller and turned her back on him and walked away, leaving the customer looking confused before he left the store (Employer's Exhibit Two). Also on May 21, 2007, it was reported the claimant had "a fit of rage" and one crew member walked out because of it. On May 22, 2007, a crew member told Mr. Miller that she witnessed the claimant throwing away an employment application because she did not personally like the applicant and that she was not passing along all applications to Mr. Miller as was the store's procedure. On May 23, 2007, the employer terminated the claimant's employment for throwing the coffee filter and using profanity and failure to address a customer complaint in the proper manner. The employer had verbally warned the claimant about several of these behaviors but does not follow the traditional verbal, written and possible suspension before termination that it would for non-management employees.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer cited numerous instances of misconduct on the part of the claimant ranging from inappropriate comments, to failure to follow procedures, including throwing away applications, and throwing a coffee filter at the front counter and using profanity before treating a complaining customer in a rude manner. As a manager the claimant had a higher duty to act professionally and appropriately and she failed to do so on several occasions. While the claimant denies many of the allegations, Mr. Miller kept a detailed business record of the events as they occurred and those records were credible. Although the employer might have warned the claimant in a more direct manner, the fact that she was a manager negates their responsibility for warning her in the same way it would be required to warn a crew member. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be

credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The July 23, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,208.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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