

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LESLIE W HARDIN
Claimant

APPEAL NO: 06A-UI-08417-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CRACKER BARREL OLD COUNTRY
STORE INC**
Employer

**OC: 07/23/06 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Cracker Barrel, filed an appeal from a decision dated August 14, 2006, reference 01. The decision allowed benefits to the claimant, Leslie Hardin. After due notice was issued a hearing was held by telephone conference call on September 7, 2006. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by General Manager Wes Hansen.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of his unemployment benefits.

FINDINGS OF FACT:

Leslie Hardin was employed by Cracker Barrel for approximately nine days, ending July 24, 2006. He was a full-time night maintenance worker. The claimant was known to General Manager Wes Hansen as Mr. Hardin's spouse is an employee of the restaurant. The employer hired the claimant and two or three days after he began working, he was asked to fill out a job application for the file. Mr. Hardin answered truthfully that he had been convicted of a felony.

The application was reviewed by the general manager who consulted with the corporate human resources department. It is company policy not to hire anyone with a felony conviction and the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

The claimant was discharged because he had been convicted of a felony. He did not falsify his work application, but because the employer did not have him fill out an application until he had already been hired, it did not know of the conviction beforehand. There is no evidence of any other substantial, job-related misconduct which caused the separation and disqualification may not be imposed.

DECISION:

The representative's decision of August 14, 2006, reference 01, is affirmed. Leslie Hardin is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs