

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN R FUGLE

Claimant

APPEAL NO. 08A-UI-04251-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALD'S RESTAURANT

Employer

**OC: 04/29/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

McDonald's Restaurant (employer) appealed a representative's April 29, 2008 decision (reference 01) that concluded John R. Fugle (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 14, 2008. The claimant participated in the hearing with his attorney, Donna McMahan. Erin Barr, Markus Knighton, and S. T. Taylor testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 8, 2007. The claimant worked about 35 hours a week as a crew person. When the claimant reported to work on February 6, 2008, he noticed Knighton appeared stressed. Knighton worked a double shift that day and had been at work since 5:00 a.m.

Between 8:30 and 9:30 p.m., a former employee came in. Both the claimant and Knighton talked to her. Knighton overheard the claimant offer to give the former employee some money so she could buy some food. Knighton told the claimant he knew what was going on and told him to get back to work. The claimant took offense at Knighton's comment. The two exchanged words and raised their voices. Finally, Knighton told the claimant to leave. The claimant did not understand why he had to leave and questioned Knighton. Taylor, an employee who was working, overheard the two men talk in raised voices. After Knighton told the claimant he was discharged, the claimant went to the back room to punch out. He made a comment to himself that this was s_____. Taylor overheard the claimant's comment. The claimant then called his daughter to pick him up from work.

The claimant did not return to work, because Knighton told him he was discharged before he left work. On February 7, Barr learned about the February 6 incident. Barr had been told the claimant said he quit before he left work. Barr and Knighton decided to terminate the claimant's employment because the claimant violated the employer's rules about using profanity at work. The employer did not contact the claimant about the February 7 discharge decision, because the employer understood the claimant had already quit. The claimant did not return to work. When he picked up his last paycheck, he returned his uniforms.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. A preponderance of the evidence establishes that Knighton told the claimant to leave work early on February 6, 2008. This is supported by Knighton's report he made that night, the claimant's testimony, and Taylor's testimony. Barr and Knighton's decision the next day to end the claimant's employment further supports the conclusion that the claimant did not quit his employment.

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The undisputed evidence establishes Knighton worked a double shift on February 6. The evidence also establishes that the claimant and Knighton had a verbal confrontation after the claimant talked to a former employee. Both the claimant and Knighton raised their voices to the extent that Taylor heard them and understood they were upset with one another. Since neither Knighton nor Taylor remembered what profanities the claimant uttered, the claimant's testimony that he said, "This is s____," as he left and after Knighton told him to leave, is credible.

Knighton worked a double shift that day and it is understandable why he does not remember everything that happened that night. However, Knighton's testimony during the hearing contradicted a report he asserted he made on February 6. Even Taylor testified that he heard Knighton tell the claimant to leave. Based on the inconsistencies in Knighton's testimony, the claimant's testimony is more credible than Knighton's. A preponderance of the credible

evidence does not establish that the claimant violated the employer's conduct policy or that the claimant committed a current act of work-connected misconduct. Therefore, as of April 6, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's April 29, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of April 6, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw