

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDY K SORENSON
Claimant

APPEAL NO. 14A-UI-02101-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCSOIFER'S INC
Employer

OC: 02/02/14
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated February 21, 2014, reference 02, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on March 18, 2014, by telephone conference call. The claimant failed to respond to the hearing notice and did not participate. The employer participated by Scott Soifer, President, and John Nardi, Supervisor. The record consists of the testimony of Scott Soifer; the testimony of John Nardi; and Employer's Exhibits 1-3.

ISSUES:

Whether the claimant was separated from her employment for any disqualifying reason; and
Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer owns several McDonalds restaurants. The claimant worked in several different stores. She was originally hired on March 27, 2006. She quit on November 18, 2011, and was then rehired on April 23, 2012. On August 13, 2012, she was transferred to the store in Hampton, Iowa, where she was the first assistant manager. She was put on probation on December 19, 2013, after she violated the employer's cash deposit policy for a second time. On December 30, 2013, she was informed she was being terminated from her position as first assistant manager. Because she was a long-term employee, the claimant was offered a second assistant manager position at the Charles City store. The claimant turned this job offer down and quit.

The incident that led to the claimant's termination occurred on December 15, 2013. The claimant did not take the cash deposit to the bank on December 15, 2013. The claimant had been specifically warned on December 13, 2013, that the employer's written cash handling policy required all deposits be taken to the bank prior to 11:00 a.m. (Exhibit 2 and Exhibit 3)

The claimant had not taken the November 30, 2013 deposit to the bank until December 6, 2013, and had left the deposit in her car. (Exhibit 2) The claimant was put on suspension on December 19, 2013, and the employer decided to terminate her from her position as first assistant manager due to violation of the cash deposit policy.

The claimant established a claim for unemployment insurance benefits with an original claim date of February 2, 2014. She has not made any weekly claims for benefits and no benefits have been paid.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The representative set this decision up as a voluntary quit due to a change in the contract of hire. Although the claimant refused an offer of employment because of a change of location and less money, she was also being terminated for what clearly was misconduct on her part. She knowingly violated the

employer's cash deposit policy two days after being specifically warned about not following the policy. The employer depends on cash deposits being made in a timely manner and in such a way as to protect both the deposit and the individual making the deposit. The administrative law judge concludes that this case is actually a discharge for misconduct and not a voluntary quit due to a change in the contract for hire. Since the employer has shown misconduct, benefits are denied.

The claimant established a claim for unemployment insurance benefits but has not applied for any weekly benefits and has not been paid any benefits. The overpayment issue is therefore moot.

DECISION:

The decision of the representative dated February 21, 2014, reference 02, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css