

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DARYL L DOPHEIDE
604 E 18TH ST APT E-4
CARROLL IA 51401

MCDONALDS
1731 HWY 71 N
CARROLL IA 51401

Appeal Number: 04A-UI-08728-DWT
OC: 07/25/04 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

McDonald's (employer) appealed a representative's August 12, 2004 decision (reference 01) that concluded Daryl L. Dopheide (claimant) was qualified to receive unemployment insurance 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 September 7, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Brenda Hugeback, the Store Manager, appeared 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 2, 2004. The employer hired the claimant to work as a full-time crew person. Normally, new employees receive 40 hours of training at various workstations. The claimant worked 106 hours at the fryer and had not been moved to another station because he could not satisfactorily complete the assigned job duties at the fryer. The employer talked to the claimant about his unsatisfactory job performance after the first 30 days of employment. Although the claimant indicated he would try harder, the employer did not see any noticeable improvement.

The claimant did not work as scheduled on June 21 and July 9. The claimant notified the employer he was unable to work as scheduled these days, but the employer requires an employee to find a replacement. If an employee cannot find an employee to work, the employer requires the employee to contact Hugeback or her first assistant manager. The claimant did not find a replacement and did not contact Hugeback. On July 8, the claimant brought a note to work indicating he was unable to work on July 9. During orientation, the employer gave the claimant information about the employer's replacement policy.

On July 5, the claimant received a written warning for cooking too many nuggets after the employer told him to keep nuggets at a low level, which meant having 12 nuggets as a backup. When the employer discovered the claimant had 49 backup nuggets instead of 12 nuggets, the employer gave the claimant a warning for failing to follow directions. Although the claimant was the only person assigned to the fryer, he indicated he was not the person who had cooked so many nuggets.

When the claimant reported to work on July 11, the employer discharged him. The employer discharged him because he did not work as scheduled on June 21 and July 9, he received the July 5 written warning and he could not satisfactorily do the work the employer assigned him to do.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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).

The employer established business reasons for discharging the claimant. The evidence does not establish that the claimant intentionally disregarded the employer's policies. First, the facts show the claimant did not understand the job duties at the fryer. This is evidenced by the fact the employer usually has a new employee working at the fryer for 40 hours, but the claimant worked 106 hours at this position and still did not complete the work satisfactorily. Even though the claimant did not find his own replacement, the evidence does not establish that management did not know he was unable to work on July 9. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of July 25, 2004, he is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's August 12, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons, but the claimant did not commit work-connected misconduct. As of July 25, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

dlw/pjs