

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CONTESSA CROOKSHANDS**

Claimant

**APPEAL NO. 08A-UI-06574-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE BUTTON FACTORY RESTAURANT**

Employer

**OC: 06/15/08 R: 04  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The Button Factory Restaurant (employer) appealed a representative's July 11, 2008 decision (reference 01) that concluded Contessa Crookshanks (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 4, 2008. The claimant provided a telephone number for the hearing but was not available at that number. The administrative law judge left a voice message for the claimant, but the claimant did not return the call prior to the end of the hearing. The employer participated by Ann Meeker, Owner/President.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on December 21, 2007, as a part-time cook. The claimant was rarely on time for work. She used inappropriate language, failed to perform assigned tasks, and did not always dress in the required clothing. The employer issued the claimant four verbal warnings for her behavior.

On June 10, 2008, the claimant was supposed to start work at 3:00 p.m. She appeared for work five minutes late and did not have her uniform. The claimant went home and returned with the items. She was not in uniform and ready to work until 3:45 p.m. The employer terminated the claimant on or about June 16, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for 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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions regarding attendance and attire. The claimant's disregard of the employer's interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

#### **DECISION:**

The representative's July 11, 2008 decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw