

**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**

**Appeal Number: 04A-UI-00721-ET
OC 12-14-03 R 02
Claimant: Appellant (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.

**HEATHER STARNES
801 BOUNDARY ST #5
BROOKLYN IA 52211**

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 is 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.

**WEAVER ENTERPRISES LTD
PO BOX 3280
PEORIA IL 61612-3280**

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 13, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 11, 2004. The claimant participated in the hearing. Terry Moffett, Director of Operations and Ron Litchfield, Area Supervisor, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assistant manager for Weaver Enterprises (Kentucky Fried Chicken) from February 19, 2001 to December 18, 2003. On November 5, 2003, Ron

Litchfield, Area Supervisor, conducted an in-house inspection during the claimant's shift and the store scored 56 out of 100 overall with a product quality score of 20 percent of the employer's expectations. On November 11, 2003, the employer met with the claimant and told her that her performance was below company standards and she had to follow the employer's guidelines. The employer told the claimant it was giving her "one last chance." On November 24, 2003, a customer called the office to complain that the store was out of chicken for over 30 minutes. On November 26, 2003, Mr. Litchfield again visited the restaurant and found the original recipe chicken was one hour past the allowable hold time of one and one-half hours and the extra-crispy was 45 minutes past the hold time. Two other products did not have the hold times written down and the claimant received a verbal warning regarding hold times. On December 14, 2003, Mr. Litchfield returned to the store during the claimant's shift and did an in-store coaching. The claimant scored zero out of a possible 22 on holding times and Mr. Litchfield issued a final written warning to the claimant stating any more holding time issues would result in the claimant's demotion from first assistant manager. On December 16, 2003, the company president visited the store at lunchtime and found expired product. She called Mr. Litchfield and explained what she observed at the store and Mr. Litchfield called the claimant and said the situation was unacceptable and the claimant needed to correct the problem. At 3:30 p.m., Glen Johnson of the corporate office conducted an unannounced inspection and there was still expired product there. The expired product should have been pulled from the display case and put in a warming cabinet for potpies and other items but the claimant had not taken any steps to fix the problem and had not made fresh chicken, which takes 20 minutes. After considering these incidents Mr. Litchfield and Director of Operations Terry Moffett terminated the claimant's employment December 18, 2003. The claimant argued that the employer did not follow its disciplinary procedures because she did not receive the required two warnings for continued violations of policies. The employer testified, however, that the policy the claimant referred to covers crewmembers, not management employees.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

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).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant received a verbal warning following the November 11, 2003, meeting and was told at that time the employer was giving her "one last chance." She received a verbal warning November 26, 2003, following Mr. Litchfield's visit and a final written warning December 14, 2003. All of the warnings addressed the claimant's failure to follow the employer's policy regarding hold times on the food. Despite the warnings, however, the claimant had expired product in the display case when the company president visited the store December 16, 2003, and still had expired product out when Mr. Johnson conducted an unannounced inspection approximately two hours later. The employer discussed the situation with the claimant several times and told her she could be demoted if the hold time problems continued but the claimant's performance did not improve. The claimant's actions December 16, 2003, were not an isolated incident and her conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The January 13, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/kjf