

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD BARTELS
Claimant

APPEAL NO: 09A-UI-06065-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCSOIFER'S INC
Employer

OC: 03/22/09
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Richard Bartels (claimant) appealed an unemployment insurance decision dated April 8, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from McSoifer's, Inc. (employer), doing business as McDonalds, for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 14, 2009. The hearing was consolidated with Appeal Number 09A-UI-06043-BT since both claimants were discharged from the same policy violation. The claimant participated in the hearing. Claimant Tamara Canfield also participated in the hearing. The employer participated through owner Sam Soifer Restaurant Manager Pam Schmidtke, Assistant Manager Amy Feehrer, and crew members Brittney Harr and Lorna Barker. Employer's Exhibits One through Four were admitted into evidence. 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:

The issue is whether the claimant was discharged for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time maintenance employee from March 19, 2007 through March 23, 2009 when he was discharged. The employer has a policy that prohibits management employees from having a relationship with an employee he or she supervises. The claimant was aware of this policy but he was having a relationship with Breakfast Manager Tamara Canfield. She supervised all employees during the breakfast shift which is a time during which the claimant worked.

Crew member Brittney Harr was taking something back to the cooler door on March 11, 2009 at approximately 10:45 a.m. She heard the claimant and Ms. Canfield fighting so she put her stuff down and went to get Assistant Manager Amy Feehrer. Both Ms. Harr and Ms. Feehrer went to the back but it was quiet; Ms. Harr opened the cooler door and both employees saw the

claimant and Canfield were kissing. Ms. Harr and Ms. Feehrer left but Ms. Harr returned to the freezer again at approximately 10:55 a.m. and again saw the claimant and Ms. Canfield kissing, but Ms. Canfield now had her arms around the claimant. Ms. Harr went up to Ms. Feehrer and said, "Yuck" and then reported the incident to Ms. Feehrer. Ms. Harr indicated that it was not the first time she had seen the couple kissing. Crew member Lorna Barker also witnessed the claimant and Ms. Canfield kissing in the cooler when she went back to get salad mix. She saw Ms. Canfield had her arms around the claimant's neck but the claimant's hands were down at his side.

The employer met with management on March 12, 2009 and decided the policy violation was so serious that it warranted discharge. Ms. Canfield was discharged on March 13, 2009 but the claimant left on vacation so was not discharged until he returned to work on March 23, 2009.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 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 employer has a policy prohibiting a member of management from having a relationship with an employee the manager supervises. The employer's policy is a reasonable one, designed to avoid issues of preferential treatment and sexual harassment. The claimant admits having a relationship with Ms. Canfield but denies kissing her in the cooler on March 11, 2009. He testified that if he wanted to kiss her, he would wait until they got home which suggests the couple may be living together. The claimant's actions were volitional and he disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's conduct also shows an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 8, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css