

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIERRA T PIPKINS
Claimant

APPEAL NO: 10A-UI-16655-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MC DONALD'S RESTAURANTS OF IOWA
Employer

OC: 11/07/10
Claimant: Respondent (2/R)

Iowa Code § 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 30, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Barry Kunkel, the first assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working part time for the employer in April 2010. When the claimant was hired, she received information that if she did not call or report to work she could be suspended or terminated any time this happened.

During her employment, the claimant had a problem of reporting to work on time. On September 18, 2010, she received a written warning for again reporting to work late. This was the third time the claimant had been late that week and the warning informed her that if she was late another day, she would be suspended or discharged.

The claimant did not call or report to work on September 24. The employer planned to give her a suspension for this incident, but she did not call or report to work as scheduled on September 26 either. The employer discharged the claimant as of September 26 for on-going attendance issues.

The claimant established a claim for benefits during the week of November 7, 2010. She has filed for and received benefits since November 7, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew or should have known her job was in jeopardy when she received a written warning on September 18 for reporting to work late. Instead of improving her attendance, the claimant did not call or report to work on September 24 and 26. Since the claimant had already been warned that her job was in jeopardy, her failure to work or call on September 24 and 26 amounts to an intentional disregard of the employer's interests. The claimant committed work-connected misconduct. As of September 26, 2010, the claimant is not qualified to receive benefits.

Since the claimant has filed for and received benefits since November 7, 2010, an issue of overpayment or whether she is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's November 30, 2010 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 26, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs