

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE MCCABE

Claimant

APPEAL NO. 07A-UI-07271-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHICK-FIL-A OF NORTHPARK MALL IA

Employer

**OC: 04-01-07 R: 04
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 20, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 14, 2007. The claimant did participate. The employer did participate through Jeremy Tatman, Owner.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a manager full time beginning March 1, 2006 through May 4, 2007 when she was discharged.

The claimant was discharged for not completing the job closing lists at the end of her shift. There are three employees in the store at any one time. There are three job closing lists that must be completed by the end of each shift to insure that the restaurant is ready to operate when the next shift arrives. The claimant, as manager was responsible for completing the list she was assigned to for a particular shift, or for delegating tasks to other employees to complete and then insuring that all of the delegated tasks were in fact completed prior to the end of the shift. The claimant and all of the other managers were told in a group meeting in March that completing the job duty lists by the end of their shift was important and had to be completed. When the claimant did not complete her job duty list after being told to do so in the group meeting, Mr. Tatman met with her and with Judy, the store manager, to discuss the situation. During this second meeting in March, the claimant was warned that her failure to complete the job duties list could result in her discharge.

The job duty list applied to every manager, not just the claimant. The claimant was routinely not completing her list of job duties, which resulted in the other managers complaining about her to Mr. Tatman. The claimant was to stay until the job duty list was completed. The claimant was not getting the store swept, product stocked or getting her drawer counted at the end of every shift; all tasks that were on the job duty lists. The claimant did meet the employer's

expectations on numerous occasions in the past and had successfully performed the job functions. In the past, the claimant had been able to complete all of the assigned tasks or to delegate the tasks to others to complete.

On April 1, 2007, the claimant was told that her hours were being cut and that she was going to be discharged in the coming weeks due to her inability to complete the job duty list. The employer knew on April 1, 2007 that the claimant was going to be discharged but delayed in making the discharge, even though no additional misconduct occurred between April 1 and the date of her discharge on May 4, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer delayed in discharging the claimant for almost four weeks even after acknowledging that the decision to discharge her had been made on April 1, 2007. The employer's delay in making the discharge makes the subsequent discharge for a non-current act of misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The July 20, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css