

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

MELISA C MCNEALY
1306 W DONALD ST APT 121
WATERLOO IA 50703-1649

J & M PARTNERSHIP
MCDONALD'S
2016 HOWARD AVE
WATERLOO IA 50702

Appeal Number: 06A-UI-08246-S2T
OC: 07/16/06 R: 03
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.

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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Melissa McNealy (claimant) appealed a representative's August 10, 2006 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with J & M Partnership (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 28, 2006. The claimant participated personally. The employer participated by Terri Torres, Area Supervisor.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 20, 2004, as a part-time swing manager. The employer gave the claimant ten weeks of manager training in the fall of 2005. On January 18, 2005, the employer gave the claimant a written warning for leaving work without telling the supervisor. The employer issued the claimant a written warning on June 6, 2005, for horseplay with a co-worker. On June 21, 2005, the employer issued the claimant a written warning for leaving work without performing all her duties.

On July 4, 2006, the claimant was in charge of the restaurant. The store was scheduled to close at 10:00 p.m. but the claimant shut down the store at 9:00 p.m. The claimant testified that she understood she could close the restaurant early if the store did less than \$100.00 in sales in the previous hour. Between 8:00 and 9:00 p.m. the store did \$158.00 in sales. No person in the company has the authority to close the store absent an emergency except the owner. This rule was taught to managers in training. The employer terminated the claimant on July 5, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was.

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 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). The claimant received three written warnings for failure to follow instructions. On July 4, 2006, the claimant wanted to leave work early. She closed the store without permission. She failed to consider the employer's business interests and acted in her own interest. The claimant's disregard of the employer's interests is misconduct. As such she is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's August 10, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are denied.

bas/cs