

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

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CRACKER BARREL  
OLD COUNTRY STORE INC  
c/o SHEAKLEY UNISERVICE INC  
PO BOX 42212  
CINCINNATI OH 45242 0212

Appeal Number: 05A-UI-00162-DWT  
OC: 12/05/04 R: 01  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Cracker Barrel Old Country Store, Inc. (employer) appealed a representative's December 22, 2004 decision (reference 01) that concluded Michelle C. Clemons (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 20, 2005. The claimant participated in the hearing. Scott Miller, the general manager, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on October 17, 2001. The claimant worked as a full-time server. The employer had a problem with the language employees used at work. At various times during her employment, the claimant and other employees swore at work. In an attempt to eliminate the use of profanity at work, the employer attached a warning to employees' paychecks mid or late October 2004. The employer informed employees they were not allowed to swear anymore at work.

In late November 2004, the employer attached another written memo to all employees' paychecks. This memo indicated this was the final warning and if any employee swore at work, they would be discharged.

On December 4, 2004, the claimant was picking up a food order when she realized she forgot to put in part of the order. The claimant was angry with herself for making this mistake and said "shit" to herself. A manager, who was three to four feet from the claimant, heard this comment. The manager warned the claimant about swearing at work. Several hours later, the employer discharged the claimant because of the comment she violated the employer's rule about swearing at work after the employer warned employees.

#### 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 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

In late November 2004, the claimant understood the employer would no longer tolerate any profanity at work. On December 4, the claimant was frustrated and inadvertently said "shit" to herself when she realized she forgot an item on an order. While the claimant did not raise her voice, she made the comment loud enough for a manager about three feet from her to hear her remark. Based on the employer's most recent warning, the employer had business reasons for discharging the claimant. The claimant did not, however, intentionally violate the employer's policy. Therefore, the claimant did not commit work-connected misconduct. As of December 5, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's December 22, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 5, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/sc