

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISA C MCNEALY
Claimant

APPEAL NO. 10A-UI-15300-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURGER KING
Employer

OC: 10/03/10
Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 27, 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. Noel Lomas, 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 concludes the claimant is not qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on October 6, 2008. Prior to her employment separation, the claimant worked as a full-time crew leader. The claimant received a copy of the employer's policies. The employee handbook informed employees that if they left work early without permission, the employer considered the employee to have voluntarily quit.

On May 14, 2010, the claimant received a final written warning for continued attendance issues. In late September 2010 but before September 30, the claimant asked Lomas if she could leave work early that day to take care of car insurance issues. Lomas gave the claimant permission to leave early sometime prior to September 30 because she had enough employees to cover all the work.

On September 30, the claimant was scheduled to work 5 a.m. to 2 p.m. Around 10:20 a.m., the claimant got her personal belonging and left work early. Lomas was at work and initially thought the claimant went on a break. The claimant did not ask Lomas if she could leave work or even tell her she was leaving. As a crew leader, the claimant knew or should have known she was required to talk to Lomas to see if she could leave and then to let her know she was leaving.

The next day the claimant was scheduled to work, October 2, she reported as scheduled. The claimant told Lomas that she thought it was okay for her to leave since Lomas gave her permission before. While Lomas is fairly liberal in granting time off, she first makes sure she has enough employees to cover the work that needs to be done before allowing an employee to leave work early. As a crew leader, the claimant was a member of management and she knew employees

could not even leave at the end of a shift until they first talked to a manager to make sure all the work had been completed. The employer discharged the claimant on October 2, 2010, for walking off the job without permission on September 30, 2010

The claimant established a claim for benefits during the week of October 3, 2010. The claimant has filed and received benefits since October 3, 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. 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).

As a member of management, the claimant knew or should have known the employer required her to get a supervisor's permission to leave work early and let the manager on duty know when she left work early. Since the claimant did not participate in the hearing, it is not known why she did not ask Lomas if she could again leave work early or even let Lomas or anyone else know she was leaving at 10 20 a.m. Based on the evidence presented during the hearing, the employer discharged the claimant for reasons constituting work-connected misconduct. As of October 3, 2010, the claimant is not qualified to receive benefits.

Since the claimant has received benefits since October 3, the 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 October 27, 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 October 3, 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. The 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/kjw