

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARRY B HAMILTON
Claimant

APPEAL NO: 09A-UI-17326-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WENDY'S
Employer

OC: 10/18/09
Claimant: Respondent (2/R)

Section 96 .5-2- a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's November 4, 2009 decision (reference 01) that concluded the claimant was qualified to receive 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 December 9, 2009. The claimant did not respond to the hearing notice or participate in the hearing. Kris Wallace, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer May 28, 2008. He worked as a part-time front-end employee. The claimant quit on January 25, 2009. The employer rehired the claimant on June 24, 2009. The claimant again worked part time, 15 to 20 hours a week, as a front-end employee.

On September 24, 2009, Wallace received a customer's September 23 complaint. The customer reported that the claimant ignored the customer when the claimant and a co-worker talked and made inappropriate comments. After a manager came by and told the two to knock it off, it took another few minutes for the claimant to take the customer's order. The claimant also ignored the person behind this customer to the extent that the next customer finally just told the claimant what he wanted. The customer did not appreciate the claimant yelling at a new employee. The complaining customer indicated he would no longer patronize the employer as a result of the claimant's September's actions. Wallace talked to the claimant about the customer's complaint and emphasized the importance of treating customers appropriately and how to act in front of customers.

Later that day when Wallace was not at work, the claimant started swearing in front of customers. When the assistant manager told the claimant to stop swearing, the claimant responded by telling the assistant manager he was not a kid and could cuss if he wanted to. The assistant manager reported this incident to Wallace a short time later. Wallace then decided to discharge the claimant because he had just talked to him that morning about the way he needed to act in front of customers. The employer discharged the claimant on September 26, 2009.

The claimant established a claim for benefits during the week of October 18, 2009. The claimant has filed for and received benefits since October 18, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. There are two employment separations in this case. The first one occurred on January 25, 2009, when the claimant quit. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6-2.

The claimant may have had personal reasons for quitting, but the evidence does not establish that he quit for reasons that qualify him to receive benefits. Since the claimant voluntarily quit his employment without good cause attributable to the employer, the employer's account is not subject to charge for wage credits the claimant earned May 28, 2008, through January 25, 2009.

After the employer rehired the claimant on June 24, 2009, the employer discharged him on September 26, 2009. 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).

The morning of September 26, the employer talked to the claimant about his conduct in front of customers. The afternoon of September 26, in the general manager's absence, the claimant swore in front of customers and was asked to stop. Instead of apologizing for his conduct, the claimant was insubordinate to the assistant manager. The claimant's conduct on September 26 after the employer talked to him about the way he acted in front of customers amounts to work-connected misconduct. Therefore, as of October 18, 2009, the claimant is not qualified to receive benefits.

Since the claimant has filed for and received benefits since October 18, 2009, the issue of overpayment or whether the claimant is eligible for a waiver of overpayment shall be remanded to the Claims Section.

DECISION:

The representative's November 4, 2009 decision (reference 01) is reversed. The employer discharged the claimant on September 26, 2009, for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 18, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he 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/css