

**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**

**CAROL M RIGGLE  
4539 E WASHBURN RD  
WASHBURN IA 50706**

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

**STEVE NORBY  
ATTORNEY AT LAW  
607 SYCAMORE ST #708  
WATERLOO IA 50703**

**Appeal Number: 06A-UI-05123-CT  
OC: 04/16/06 R: 03  
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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

McDonald's filed an appeal from a representative's decision dated May 8, 2006, reference 01, which held that no disqualification would be imposed regarding Carol Riggle's separation from employment. After due notice was issued, a hearing was held by telephone on May 31, 2006. Ms. Riggle participated personally and was represented by Steve Norby, Attorney at Law. The employer participated by Ron Duncan, Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Riggle was employed by McDonald's from June 24, 2002 until April 19, 2006, as a full-time crew member. On January 13, 2005, she

received a written warning for being rude to a customer. The specifics of the customer's complaint are unknown. On March 24, 2006, a customer asked if he could "super-size" his order. Ms. Riggle responded by slamming her hand on the counter, sighing and saying "I suppose." She was put on notice that her continued employment was in jeopardy.

On April 19, 2006, a customer complained that Ms. Riggle was rude. Apparently, the customer objected to the tone of voice she used. Ms. Riggle acknowledged that she may have been short with the customer due to the restaurant being short-staffed that day. She was discharged the same day. The above matters constituted the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Riggle was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was predicated on a current act that constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). Ms. Riggle's discharge was prompted by a customer's complaint regarding the tone of her voice. The administrative law judge does not believe she intended to be rude or curt to the customer on April 19. Without more specific information regarding the exchange between Ms. Riggle and the customer on that date, the administrative law judge cannot conclude that she committed an act of misconduct on that date.

Ms. Riggle was employed by McDonald's for a period of four years. The employer presented evidence of only three occasions on which she was alleged to have been rude to customers. Based on this history, the administrative law judge cannot conclude that she had a pattern and practice of disregarding the employer's standards. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). The record does not justify a conclusion of willful and wanton misconduct. For the reasons stated herein, it is concluded that the employer has failed to satisfy its burden of proving disqualifying misconduct. Accordingly, benefits are allowed.

#### DECISION:

The representative's decision dated May 8, 2006, reference 01, is hereby affirmed. Ms. Riggle was discharged, but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kkf