

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLA BROWN
Claimant

APPEAL NO: 09A-UI-03044-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALDS
Employer

OC: 01/18/09
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Carla Brown (claimant) appealed a representative's February 16, 2009 decision (reference 01) that disqualified her from receiving benefits and held the account of McDonalds (employer) exempt from charge because the employer discharged her for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 16, 2009. The claimant participated in the hearing. The employer did not respond to the hearing notice. Based on the evidence, the arguments of the claimant, 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 employer hired the claimant on September 12, 2007. At the time of her employment separation, the claimant worked as a full-time cook. Sherry Marshall supervised the claimant.

In early January 2009, a co-worker yelled at the claimant to hurry up and get some food cooked for a customer. The claimant told the co-worker she did not need to holler at the claimant because she was not a child and was working to the best of her ability. This co-worker wrote up that the claimant confronted the employee.

On January 15, 2009, another employee hollered at the claimant to hurry up with some food because she needed the food right away. The claimant again told this employee not to holler at her because the claimant was not a child. The employee went to Marshall and reported the incident with the claimant. Marshall then approached the claimant and in a raised voice told the claimant she was tired of this. Marshall then told the claimant to punch out and leave. Marshall indicated she would talk to the claimant the next day about her continued employment. On January 16, 2009, the employer discharged the claimant because of the incident the day before.

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 section 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).

The evidence establishes the employer may have had business reasons for discharging the claimant. The facts do not, however, establish that the claimant committed work-connected misconduct. Therefore, as of January 18, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's February 16, 2009 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of January 18, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs