

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN A MERRITT
Claimant

APPEAL NO. 09A-UI-17904-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEATON INC - BURGER KING
Employer

OC: 11/01/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Benjamin Merritt filed an appeal from a representative's decision dated November 24, 2009, reference 01, which denied benefits based on his separation from Burger King. After due notice was issued, a hearing was held by telephone on January 8, 2010. Mr. Merritt participated personally and was represented by Jim Thomas, Attorney at Law. The employer participated by Kathy Frerichs, Controller, and Tasha Tucker, Assistant Manager. The hearing was recessed pending receipt of additional evidence and reconvened on March 2, 2010. The same parties again participated with additional testimony from Lindsay Wagner and Erica Long on behalf of the employer.

ISSUE:

At issue in this matter is whether Mr. Merritt was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Merritt began working for Burger King on May 29, 2007. He worked approximately 35 hours each week as a crew member. On October 30, 2009, he was scheduled to work from 11:00 p.m. until 7:00 a.m. He left work early after telling the employer that his son was in the intensive care unit at the hospital in Iowa City. On October 31, he was notified that he would need to provide a doctor's note verifying his son's hospital admission. Mr. Merritt did not report for scheduled work or contact the employer on October 31. He initially indicated that he did not report for work because Lindsay Wagner had called him that morning to advise that he no longer had a job. However, Ms. Wagner had left town the evening of October 30 and did not return until November 9.

REASONING AND CONCLUSIONS OF LAW:

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). Mr. Merritt was discharged for falsifying his reason for leaving work early on October 30 and for not reporting to work on October 31. He owed his employer the duty of honesty but breached that obligation when he gave a false reason for leaving work early. Given the fact that he denied having a son, it must be concluded that he gave false information to the employer when he said he was leaving work because his son was hospitalized. If he had been misunderstood on October 30 as to why he wanted to leave early, he had the opportunity to correct the misunderstanding when he was contacted on October 31 and told he needed a doctor's statement regarding his son's hospitalization.

Perhaps because he did not have the required doctor's statement, Mr. Merritt did not report for scheduled work on October 31. Although he said Lindsay Wagner had called him that morning and fired him, it appears that she was not even in town on the morning of October 31. After considering all of the evidence, the administrative law judge concludes that Mr. Merritt's conduct of October 30 and 31 constituted a substantial disregard of the standards the employer had the right to expect. As such, benefits are denied.

DECISION:

The representative's decision dated November 24, 2009, reference 01, is hereby affirmed. Mr. Merritt was discharged by Burger King for misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs