

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

BRIAN S LEWIS  
2220 W 3<sup>RD</sup> ST  
DAVENPORT IA 52802

HARDEES FOOD SYSTEMS INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-12035-DWT  
OC: 10/30/05 R: 04  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Hardees Food Systems, Inc. (employer) appealed a representative's November 18, 2005 decision (reference 01) that concluded Brian S. Lewis (claimant) was qualified to receive unemployment insurance 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 13, 2005. The claimant participated in the hearing. Rebecca Boynton, the regional human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 claimant started working for the employer in March 2004. The claimant worked part-time, 15 to 20 hours a week as a crew person.

The claimant had a doctor's appointment in mid-July for a hernia. The claimant told the store manager and assistant store manager about the appointment. Neither the store manager nor the assistant manager indicated any problems with the claimant taking time off for his doctor's appointment. The claimant's doctor appointment was written on the store calendar.

The claimant did not work, July 18, 2005, the day of his doctor's appointment. The next day, the claimant did not work either. The claimant contacted the employer to let the employer know he had a doctor's excuse indicating he could not work these two days. The store manager told the claimant he did not need to bring her the doctor's excuses because he no longer had a job.

The store manager reported that the claimant abandoned his job. Even though the claimant did not report to work anytime after July 18, the employer did not end the employment relationship until August 15, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §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 claimant's testimony as to what happened in mid-July 2005 is more credible than the employer's reliance on unsupported hearsay information. The evidence does not establish that the claimant abandoned his job. Instead, a preponderance of the evidence shows that the employer discharged the claimant in mid-July for missing work on days he had a doctor's note verifying he could not work. Since none of the employees with personal knowledge about these events testified, the evidence does not establish the reason for discharging the claimant. Therefore, the facts do not show that the claimant committed work-connected misconduct. As of October 30, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 18, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of October 30, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs