

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

KELLY MCCLAIN  
509 N IOWA  
WASHINGTON IA 52353

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

Appeal Number: 05A-UI-06977-BT  
OC: 05/22/05 R: 03  
Claimant: Respondent (2)

**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 for Misconduct  
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Hardee's Food Systems, Inc. (employer) appealed an unemployment insurance decision dated June 24, 2005, reference 02, which held that Kelly McClain (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 26, 2005. The claimant participated in the hearing. The employer participated through Chris Hampton, District Manager.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time general manager from approximately 2003 through May 25, 2005. The employer had a safety system in which the freezers were regularly checked to ensure they were at the proper temperatures, since an inadequate temperature could result in food spoilage. When the freezers are checked, the employee is supposed to document that information in certain forms provided for that purpose. Each freezer has a different schedule as to when it needs to be checked. The claimant had an issue of not completing her paperwork and had been warned by both the regional director and the district manager.

The claimant was discharged for her failure to follow through in these duties which resulted in thousands of dollars of wasted product and unsafe food product being served to customers. The main walk-in freezer broke down on approximately Friday, May 20, 2005 but since there was no documentation of the required temperature checks, it cannot be known exactly when it occurred. The technicians were called to fix the freezer, but it broke down again and the technicians were not called again until Monday evening on May 23, 2005. The technician reported that the freezer was probably not working for two days based on the temperature of the products. The temperature tracking had not been done since May 18, 2005. An employee is the individual who initially contacted the employer the first time and he contacted the local regulatory employees the second time also. The Washington County Health Department arrived at approximately the same time as the district manager did on May 25, 2005. The health agency had also notified a state inspector who had also arrived. When the district manager walked into the restaurant, a customer approached him and reported that he had become sick as a result of the food that he had eaten from the restaurant. The entire contents of the freezer had to be thrown out at a cost of approximately \$1,600.00. The claimant denied all wrongdoing and blamed the problem on her subordinates, even though she was the employee in charge.

The claimant filed a claim for unemployment insurance benefits effective May 22, 2005 and has received benefits after the separation from employment in the amount of \$2,825.00.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
  - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 claimant was discharged for her repeated failure to complete her duties which resulted in gross negligence. Although the claimant denies responsibility, she was the individual in charge. As a supervisor, she not only had the responsibility to hire competent employees but the duty to ensure these employees were properly doing their work. She received extra compensation for her increased responsibility. The temperatures had either not been checked for at least one week prior to the freezer breaking down or they had been checked but not documented. Regardless, the outcome was the same and it can be directly attributable to the claimant that spoiled food had been served and that over \$1,600.00 worth of food had to be thrown out. The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be

credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated July 24, 2005, reference 02, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,825.00.

sdb/kjf