

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**KIMBERLY J KRUGER**  
Claimant

**BEATON INC**  
Employer

**APPEAL 15A-UI-07025-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/24/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 12, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on July 22, 2015. The claimant participated personally, and had one witness, Michael Jump. The employer participated through Kathy Freichs. Andrea Moore was also an employer witness.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a crew member and was separated from employment on May 9, 2015, when she was discharged for insubordination.

The employer operates as a Burger King restaurant. The undisputed evidence is that the claimant was hard working and a dedicated employee. The final incident occurred on May 8, 2015, when the claimant had an argument with her manager, Lindsay Wagner. At the heart of the argument was whether some sauce should have been disposed or used for the day. Ms. Wagner directed the claimant to use the sauce. The claimant did not agree with the decision, and an argument ensued. The claimant was embarrassed by how her manager treated her in front of the other employees. The claimant also repeatedly disregarded Ms. Wagner's directive and tried to bring in other employees to the argument asking them if they would serve the sauce, against Ms. Wagner's directives. Ms. Wagner's manager, Erica Long, was on site that day and observed the argument. She advised the claimant she had to do what her manager (Ms. Wagner) instructed. The claimant was sent home for disregarding Ms. Wagner's directive and for being argumentative.

Once home, the claimant called human resources, to report the incident. The claimant was upset that Ms. Wagner wanted to serve the sauce. The employer tried to explain to the claimant that the sauce was not at issue, but rather how the claimant handled her manager's request for

her to perform a task, and the claimant's response. The claimant attempted to call Ms. Wagner back throughout the day, but she was unable to talk due to business needs. During the day, the claimant was advised that she would need to sign a warning for her conduct in response to the sauce, in order to return to work. The claimant argued, stating she would not sign a warning and admit guilt. The employer made attempts to explain to the claimant that she was not admitting guilt but rather receipt, and that failure to do so, would result in her discharge. The claimant never read the warning or came in to review the warning and told the employer she refused to sign it, and so separation occurred. Had the claimant returned to work, she would have been requested to sign a written warning with regard to her argumentative and insubordinate actions from the prior day and retained employment.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Both parties agree that the claimant was hard working and a dedicated employee. There is no question that the claimant truly did think the sauce in question should be served. At issue here, is not the sauce itself, but how the claimant conducted herself when receiving directives from her manager about the sauce, and her subsequent refusal to sign a written reprimand. Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The claimant admitted she felt embarrassed when confronted by Ms. Wagner in front of other employees about not handling the sauce as directed. The claimant's response by trying to challenge Ms. Wagner's judgment by asking other non-management members if she was wrong, was not professional or appropriate. If the claimant was genuinely concerned, she should have respectfully asserted her concerns to either Ms. Wagner's manager, Erica Long, or alternately, human resources. Instead, the claimant became so disruptive that she had to be sent home.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The manager, Lindsay Wagner, was tenured and had the authority to determine whether a sauce should be served or disposed. If the claimant had served the sauce and it was indeed bad, arguably, Ms. Wagner, would be held accountable for her judgment to serve it, not the claimant as a crew member following management's instructions. Based on the evidence presented at the hearing, the administrative law judge concludes the request by Ms. Wagner was reasonable, and the claimant failed to establish a persuasive reason for non-compliance, as well as a need to escalate the confrontation.

Further, the employer was not improper when determining the claimant's argumentative and insubordinate behavior at the store warranted a written reprimand. The claimant was advised that signing a warning did not admit guilt but rather acknowledged receipt of the communication that her conduct was not in accordance with employer expectations and policies. The claimant was also advised that if she did not sign the proposed reprimand, she would lose her job. Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). The claimant refused to sign the warning before even reading it or having an opportunity to discuss it. Based on the evidence presented, the employer has met its burden of proof to establish the claimant's actions were disqualifying job related misconduct. Benefits are denied.

Alternately, if a higher authority were to determine the claimant was not discharged but rather, voluntarily quit after the May 8, 2015 incident when she refused to return to the store (and sign the warning), she would still be disqualified as she voluntarily quit without good cause.

Iowa Admin. Code r. 871-24.25(28) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

Whether the separation is characterized as a quit or a discharge, the claimant remains disqualified for benefits.

**DECISION:**

The June 12, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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