

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

JAMES A NOBLE  
430 OAK  
HAMILTON IL 62341

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

Appeal Number: 06A-UI-02763-SWT  
OC: 02/12/06 R: 04  
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  
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 24, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 28, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Chris Hampton participated in the hearing on behalf of the employer with a witness, Melody Stepp. Exhibits One, Two, and Three were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer as an assistant manager from October 2003 to February 2, 2006. Melody Stepp, the general manager, was the claimant's supervisor. Stepp

had verbally counseled the claimant several times about his unpleasant demeanor and tone of voice.

On January 8, 2006, the employer received a customer complaint about the claimant stating he was rude and seemed put out that the customer was there. The complaint was discussed with the claimant. Later in January, the employer received another complaint from a customer about the claimant's rude conduct through the employer's toll-free guest hotline.

On January 22, 2006, Stepp was working with the claimant and heard him mumbling and complaining about what customers were ordering. On January 25, Stepp called a staff meeting for the restaurant to discuss customer complaints about rudeness. Stepp announced to the staff that the employer expected employees to do everything possible to make customers happy and employees should make things right with the customers rather than fight with them. The claimant commented, "So if a customer says we shortchanged them \$500.00, we should not fight with them, we should make it right." At the end of the staff meeting, Stepp had employees sign a statement that stated the employer had received two customer complaints in the past two weeks, and from that point on, if the employer received a valid customer complaint about an employee being rude, the employee would be discharged. Instead of simply signing the sheet, the claimant wrote, "I plead the 5th," and signed the sheet. All the other staff signed the same sheet, so his comment could be read by other employees.

On January 26, 2006, Stepp was again working with the claimant. The claimant did not like making milkshakes and complained about that job duty. When Stepp told him that there would probably be a lot of milkshakes ordered that day since the weather was nice, the claimant responded that he needed to get a new job before summer. Stepp asked him why he did not just quit since he was so unhappy. The claimant said he could not quit because he had a family to support and would need to be fired so he could get unemployment benefits.

On January 28, 2006, the claimant was responsible for preparing a bank bag. Under the employer's work rules, the amount of money in the bag had to be verified by two employees who were required to initial the bag. Stepp could read the claimant's initials but not those of the other employee. She left a note asking who the second employee was. The claimant replied by writing, "Casper the Friendly Ghost."

Based on the customer complaints, his negative attitude toward his job, and his defiant and sarcastic remarks cited in the preceding paragraphs, the employer discharged the claimant on February 2, 2006.

The claimant filed for and received a total of \$2,786.00 in unemployment insurance benefits for the weeks between February 12 and April 1, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 claimant's conduct during the month of January 2006 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. As a manager, the claimant had the duty to support his manager and not undermine her authority. During the staff meeting, the claimant knew that Stepp's comments were made to improve customer service and she was not suggesting employees hand out money to customers who claimed they were short-changed. His comment undercut Stepp's efforts to improve the service provided to customers. Likewise, the claimant's "I plead the 5th" comment could only be perceived by employees as an indication that he considered signing the statement as a joke. Finally, the employer had a legitimate reason for making sure the proper verification was done on the money bag. Consistent with the claimant's flippant attitude, he responded to the request with a joke. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$2,786.00 in unemployment insurance benefits for the weeks between February 12 and April 1, 2006.

DECISION:

The unemployment insurance decision dated February 24, 2006, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$2,786.00 in unemployment insurance benefits, which must be repaid.

saw/pjs