

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBORAH C MCDOWELL**  
Claimant

**APPEAL NO. 10A-UI-11801-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEATON INC**  
Employer

**OC: 07/25/10**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Deborah McDowell, filed an appeal from a decision dated August 19, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 7, 2010. The claimant participated on her own behalf. The employer, Beaton, Inc., participated by Controller Kathy Frerichs.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Deborah McDowell was employed by Beaton, Inc. from October 25, 2005 until August 23, 2010 as a full-time manager. On July 16, 2010, she was arrested at work on a charge of theft. This was due to a complaint by the bank used by the employer that Ms. McDowell had made a deposit in the night drop box on July 5, 2010, and then removed from the box a deposit belonging to another customer.

District Manager Michelle Peska was informed of the arrest the same day and later that evening notified the claimant she was suspended pending the outcome of the criminal charge. The claimant denied any wrongdoing and continues to do so as of the date of the hearing.

Approximately one month later, Ms. Peska and Controller Kathy Frerichs determined the restaurant could not be managed profitably without a manager and decided to discharge Ms. McDowell. The district manager informed her of the discharge on August 23, 2010.

## REASONING AND CONCLUSIONS OF 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.

The claimant was suspended without pay pending the outcome of the criminal matter. The theft was allegedly made while she was performing the night deposit as part of her duties, but this was only an allegation. The suspension ended in discharge five weeks later before any resolution to the criminal charges had been made.

The claimant continues to deny any wrongdoing and the employer has failed to provide any proof of criminal conduct. The actual decision to discharge was not based on the criminal charges but on the determination of the employer that the restaurant needed a full-time manager in place to maintain profitability. Nothing further had occurred in the criminal case at the time that decision was made.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The lack of evidence of misconduct in this case means the employer has failed to meet that burden of proof and disqualification may not be imposed.

**DECISION:**

The representative's decision of August 19, 2010, reference 01, is reversed. Deborah McDowell is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw