

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELINDA CARLSON
Claimant

APPEAL NO. 14A-UI-00291-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

K G B INC
SUBWAY
Employer

OC: 12/08/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Melinda Carlson (claimant) appealed an unemployment insurance decision dated January 2, 2014, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Subway (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2014. The claimant participates in the hearing. The employer participated through Manager Kathy Spores and Assistant Manager Ashley Skiye. Employer's Exhibits One through Seven were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

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 part-time sandwich artist from September 15, 2008, through December 10, 2013, when she was discharged after receiving numerous disciplinary warnings. Written warnings were issued to her in 2013 on May 17, May 28, June 29, July 8, and December 10. Three warnings were issued as a result of customer complaints and another warning was issued when the claimant was caught copying private management documents. The claimant was suspended for a week as a result of the disciplinary warning issued on July 8, 2013.

The last straw occurred on December 10, 2013, when the claimant was scheduled to work at 5:00 p.m. but called the employer to say that she was going to be late. She told the assistant manager that she would be there when she got there. The assistant manager told her she needed to get there as soon as possible since there were only two other employees working. The store employees called the assistant manager at 5:20 p.m. to report the claimant had not arrived and they could not contact her by phone. One employee finally reached the claimant by

phone at 7:00 p.m. and the claimant said she was on the other side of Fort Dodge, which was over two and one half hours away from the store. The assistant manager had to go to work that evening to cover the claimant's shift. The claimant finally arrived after 9:00 p.m. and was discharged at that time.

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 § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on December 10, 2013, for receiving five written disciplinary warnings. The final straw was her failure to report to work until four hours after her shift began on December 10, 2013. She knew or should have known her job was in jeopardy but went out of town even though she was scheduled to work. The claimant's actions demonstrate an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated January 2, 2014, reference 01, is affirmed. 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs