

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

JOANIE WALDING  
2801 ADEL ST  
SIOUX CITY IA 51104

STANEK INC  
HARDEE'S  
4440 SERGEANT RD  
SIOUX CITY IA 51106

Appeal Number: 05A-UI-07382-B  
OC: 06/19/05 R: 01  
Claimant: Appellant (5)

**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

STATEMENT OF THE CASE:

Joanie Walding (claimant) appealed an unemployment insurance decision dated July 12, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Hardee's (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Sioux City, Iowa on October 31, 2005. The claimant participated in the hearing with her father Darrell Blenford. The employer participated through Mark Stanek, District Manager and Terri Wellenstein, Store 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 crew member from October 16, 2003 through June 16, 2005. She was discharged for insubordination. On June 15, 2005, the district manager noticed they were busy and needed help up front so he directed the claimant to go help. She was angry because she wanted to finish what she was working on but she eventually complied, although she did roll her eyes. He told her not to roll her eyes and she denied that she had and he told her not to lie. The following day, the district manager noticed the claimant was using her bare hands to put meat on the grill and he told her she needed to use the tongs. A short while later, he again saw her using her hands and again told her to use the tongs. The claimant responded by stating, "Get away from me, you're bugging me." The district manager told her it was his job to make sure health standards were followed and she again told him he was bugging her. The claimant left her workstation and walked to the back with the district manager right behind her. She again told him to leave her alone and he told her he was doing his job and that he was always there for them. The claimant told him that was a lie and began screaming and using profanity so loud that the store manager walked to the back to try to help. The district manager told the claimant, "Joanie, let's calm down and all get back to work" but she did not return to work. The claimant apparently acted as if she was going to leave and was told that if she left, she should not return. When the claimant refused to calm down, the district manager told the store manager to get her out of there and the claimant eventually left.

#### 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.

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 repeated insubordination. She rolled her eyes at the district manager's directive, she told him to get away and to stop bugging her when he told her twice to follow a health and safety rule and she screamed profanity at him loud enough for the customers to hear. Such conduct should not be tolerated in any place of employment, regardless of whether or not profanity was commonplace in that work environment. 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.

DECISION:

The unemployment insurance decision dated July 12, 2005, reference 01, is modified with no effect. 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.

sdb/kjf