

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

SHAURICE L SMITH  
3720 – 57<sup>TH</sup> ST #32  
DES MOINES IA 50310

THE RESTAURANT CO  
PERKINS RESTAURANT & BAKERY  
C/O TALX UCM SERVICES  
PO BOX 283  
ST LOUIS MO 63166 -0283

JOHN GEYER  
C/O THOMAS J REILLEY LAW FIRM  
4900 UNIVERSITY AVE  
DES MOINES IA 50310

Appeal Number: 05A-UI-07413-DWT  
OC: 06/19/05 R: 02  
Claimant: Respondent (1)

**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

STATEMENT OF THE CASE:

Perkins Restaurant & Bakery (claimant) appealed a representative's July 12, 2005 decision (reference 01) that concluded Shaurice L. Smith (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 4, 2005. The claimant participated in the hearing with her representative, John Geyer, a paralegal. Veronica White appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 1, 2004. The claimant worked as a full-time waitress until school started in mid-November. After school started, the claimant worked part-time or 15 to 25 hours a week. White was the claimant's supervisor.

On June 10, 2005, the claimant reported to work a few minutes late because her leg bothered her. Shortly after 10:30 p.m. the claimant became frustrated with a cook who prepared one of the claimant's order incorrectly three times. After the claimant made a comment about the cook, another employee indicated the claimant should stop complaining because the claimant was not important. Since the claimant's leg already hurt, she became very upset over this remark and asked White if she could leave work early. White did not say anything to claimant, but gave the claimant a card so the claimant could punch out and leave work early.

The next day the claimant called and asked if she should report to work that evening. White did not know and told the claimant to contact the employer on Monday. On Monday, June 13, 2005, the employer informed the claimant she no longer worked for the employer because the employer considered her to have walked off the job on June 10.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts establish the claimant did not intend to quit her employer when she left work early on June 10, 2005. Even though the employer did not tell the claimant she could leave, the employer allowed the claimant to get a card to punch out and leave early. The claimant contacted the employer the next day and again on Monday as the employer directed her to do. These are all factors supporting the conclusion that the claimant did not voluntarily quit her employment. The employer made the decision the claimant could not return to and discharged the claimant on June 13, 2005.

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's

interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had compelling business reasons for discharging the claimant. The facts do not, however, establish that the claimant walked off the job on June 10 or that she committed any current act of work-connected misconduct. Therefore, as of June 19, 2005, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's July 12, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 19, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw