

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY GEARHART

Claimant

APPEAL NO: 12A-UI-01853-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC

Employer

OC: 01/08/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 21, 2012, reference 01, that held he was discharged for misconduct on January 12, 2012, and benefits are denied. A telephone hearing was held on March 13, 2012. The claimant participated. Theresa McLaughlin, HR Generalist, and Bill Mulcahy, Store Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on August 31, 2006, and last worked for the employer as a full-time grocery clerk on January 12, 2012. The claimant received an employee handbook that contained the policies of the employer. The policy prohibits selling alcohol to a minor.

After a period of absence from the store, the director received a report from employee Zewen on January 5, 2012 that claimant had sold alcohol to employee Englebrecht who is a minor. The employer confronted claimant with the report on January 10. Claimant denied the incident. The employer suspended claimant pending further investigation. Claimant made a statement to assistant manager Pingel that he provided beer for Elli (Englebrecht) and her boyfriend for a New Years Eve party.

Store Director Mulcahy called in employee Englebrecht who signed a statement on January 11 that claimant purchased alcohol for her on December 31 and gave to her in a location between the Fareway and Pamida parking lots. The employer discharged claimant for violating its policy of selling alcohol to a minor.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on January 12, 2012, for violation of the store policy that prohibits sale of alcohol to a minor. This policy violation is also in violation of state law.

The employer offered credible circumstantial evidence to establish claimant sold alcohol to minor Englebrecht on December 31. Although claimant denies it, the employer offered credible hearsay statements that corroborate claimant's statements that he did sell alcohol to a minor, which constitutes job disqualifying misconduct.

DECISION:

The department decision dated February 21, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on January 12, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs