

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MOLLY KRIZER
Claimant

APPEAL NO: 09A-UI-16577-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOODWILL INDUSTRIES OF
CENTRAL IOWA INC**
Employer

OC: 10-11-09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 28, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 11, 2009. The claimant participated in the hearing. Kathy Crooks, Human Resources Director; Robyn Hill, Retail Director; and Karen Tomlinson, Retail Coordinator, participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time store manager for Goodwill Industries from April 26, 2003 to October 9, 2009. The employer received customer complaints about items being removed through the back door and as a result Retail Director Robyn Hill and Retail Coordinator Karen Tomlinson went to the Oskaloosa store where the claimant worked October 2, 2009. While there they learned the claimant was not conducting fire, tornado, robbery, bomb threat, gas leak and medical emergency drills (Employer's Exhibit Seven). The drills were scheduled to take place during store meetings the claimant held the Sunday after the monthly management meetings held on one Thursday per month and the employer provided a monthly schedule of when to hold each drill (Employer's Exhibit Seven). The claimant was having the employees in her store read and sign the written drill forms she prepared but did not actually perform the drills (Employer's Exhibit Six). Ms. Hill and Ms. Tomlinson asked the claimant why the drills were not being performed during the store meetings and the claimant explained that not all employees could attend the Sunday store meetings so she went over the information with them individually, in groups and during store meetings. The claimant indicated she did remember the training held in March 2009 on practicing and documenting emergency drills but did not do them because she was busy and felt they were secondary to other duties as there was always something more important to do. The employer's representatives spoke to a few store employees about the

situation and after completing their investigation the claimant's employment was terminated October 9, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

There is no doubt that the claimant failed to physically perform the safety drills as required. Physically performing the drills is important because it is needed to develop a skill analogous to "muscle memory" in athletes so employees can act in frightening and threatening situations without having to think back to what a piece of paper said instead of being able to react almost on autopilot. The claimant appears to be a nice person with good intentions but in this case she failed to follow a vital policy that she was admittedly aware of but felt was secondary to other responsibilities. Under these circumstances the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The October 28, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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