

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JERILYN RENAUD**

Claimant

**APPEAL NO: 12A-UI-06520-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**

Employer

**OC: 04/29/12**

**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 May 22, 2012, reference 01, that held she was discharged for misconduct on April 21, 2012, and which denied benefits. A telephone hearing was held on June 27, 2012. The claimant participated. Steve Tilbur, store manager, and Theresa McLaughlin, HR generalist, participated for the employer.

**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 as a part-time clerk on September 16, 2009, and last worked for the employer on April 21, 2012. The claimant received an employee handbook that contained the policies of the employer. The policy states that an employee must pay for store merchandise prior to consumption. The employee must have a receipt for the merchandise.

Claimant is hypo-glycemic, which is a blood sugar problem. She felt she was having an issue with low blood sugar, so she took an employer bottle of soda and drank from it without paying for it. A store clerk reported claimant to the store manager, who left his office to confront her. Claimant admitted she did not pay for the soda and did not tell the manager about a blood sugar issue. The store manager took a statement from claimant and consulted with the home office about discharge. The employer has a zero tolerance for this policy violation, as it likens it to theft. Claimant was discharged by the employer for consuming an employer product without paying for it.

## REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on April 21, 2012, for a zero-tolerance policy violation.

Claimant violated the zero-tolerance policy of consuming store merchandise without paying for it. Her testimony that the store manager observed the act is not credible, based on his testimony the incident was reported to him by a store clerk and it took him a while to leave his office and confront her. If there was a medical excuse to mitigate claimant's policy violation, she needed to disclose the medical condition when confronted by the employer in order to give it an opportunity to consider a lesser discipline. Job-disqualifying misconduct is established.

**DECISION:**

The department decision dated May 22, 2012 reference 01 is affirmed. The claimant was discharged for misconduct on April 21, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw