

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IRENE GONZALES
Claimant

LOWES HOME CENTERS LLC
Employer

APPEAL 21A-UI-14122-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/21/21
Claimant: Appellant (1)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On June 16, 2021, the claimant/appellant filed an appeal from the June 9, 2021, (reference 02) unemployment insurance decision that disallowed benefits based on claimant being discharged for theft of company property. The parties were properly notified about the hearing. A telephone hearing was held on August 17, 2021. Claimant participated at the hearing. Employer participated through District Asset Protection Operations and Safety Measures, Nathan Andreeson. Exhibit 1 was admitted into the record.

ISSUE:

Was the separation a discharge for job-related misconduct that disqualified claimant from state unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 27, 2020. Claimant last worked as a full-time head cashier. Claimant was separated from employment on March 10, 2021, when she was terminated.

When a customer returns merchandise without a receipt the employer issues merchandise cards. The claimant observed some merchandise cards by the trash can and picked them up. The merchandise cards were issued on February 14, 2019, prior to claimant working at the store. Claimant took the two merchandise cards in her possession and used them January 23, 2021 and February 26, 2021. The two merchandise cards had a value of \$1,263.38. Claimant admits that they were not issued to her and that she used them to purchase items for herself. (Exhibit 1, pg. 11-12).

The employer has a policy that any time an associate uses a merchandise card the employer will look into the associate's history and determine if the merchandise card was issued to the associate and the circumstances surrounding the issuance of the merchandise card. When the

claimant used the merchandise cards this triggered the employer looking into the history of the merchandise cards.

On March 10, 2021, the employer called the claimant into a meeting to discuss the merchandise cards. The claimant admitted that she found them by the trash can and that she used them. Claimant also admitted that she took a Reese's candy bar (value of \$2.28) and consumed it without paying the employer. The employer put the claimant on suspension for violating their good conduct policy. The employer terminated claimant for theft. Claimant acknowledges that she knew about the theft policy. Claimant had received no prior warnings for violation of the company's theft policy. No criminal charges were pressed against the claimant.

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. Benefits are denied.

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 of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment

insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

Taking the employer's candy bar without paying for it is theft from the employer. The claimant also committed theft when she took the merchandise cards that did not belong to her and spend them. Claimant argues that Lowe's did not own the merchandise cards so it could not be a violation of their theft policy. However, the claimant is failing to recognize that the merchandise cards can only be used to purchase merchandise from the employer. By taking the merchandise cards and using them she is violating the employer's theft policy. Claimant is receiving merchandise for free that she is not entitled to receive because the cards were not issued to her. This causes a loss to the employer. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. In this case, the claimant deliberately disregarded the employer's interest and knowingly violated a company policy. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

DECISION:

The June 9, 2021, (reference 02) unemployment insurance 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.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

August 19, 2021
Decision Dated and Mailed

cs/kmj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.