

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNETH RANDOLPH**  
Claimant

**APPEAL NO: 15A-UI-10699-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE STORES COMPANY INC**  
Employer

**OC: 08/23/15**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 14, 2015, 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 October 8, 2015. The claimant participated in the hearing. Kevin Bettis, District Manager, participated in the hearing on behalf of the employer.

**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 parts pro/manager for Advance Stores Company from June 21, 2014 to August 17, 2015. He was discharged for following a shoplifter out of the store in violation of the employer's policy.

On August 1, 2015, the claimant was processing a return for a customer who then walked away from the counter toward the employer's merchandise. The claimant observed him putting items in his pocket by looking at the mirror in place so a cashier can see the store. After the customer walked out the door the claimant told the other team members in the store he needed to go outside for a minute and proceeded to follow the shoplifter out the door. He said, "Sir, you can bring the items back or I can call the police." The shoplifter continued walking toward Menards Lawn and Garden area and through its doors. The claimant went back in his store and told the other team members he was going to Menards to tell them the shoplifter might be trying the same thing on it. He went to Menards and spoke to their loss prevention officer while he was on the phone with his own store so he was not out of contact with his store. He gave the Menard's loss prevention officer a description of the shoplifter and returned to his store after being gone between seven and ten minutes.

The week before the August 1, 2015, incident, General Manager Dave Davis told the claimant and other employees they needed to be more vigilant and if they saw a shoplifter they should approach him and say something like, "You can take that out of your pocket or I will just call the police," because there had been a great deal of shrinkage from shoplifting in the store.

On August 3, 2015, Mr. Davis asked the claimant to write a statement and email it to him regarding the situation with the shoplifter August 1, 2015. Mr. Davis forwarded the information to the corporate office. The claimant was on vacation from August 9 through August 16, 2015. He worked August 17, 2015, until the end of his shift at which time Mr. Davis notified him the employer was terminating his employment for violating its shoplifting policy August 1, 2015. The employer had issued a new policy three weeks prior to the August 1, 2015, incident but the claimant was not aware of that. The claimant had been a manager for six months and had not yet completed all of the online training because he was so busy when at the store. He had not received any verbal or written warnings during his tenure with the employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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).

The claimant observed a shoplifter committing a crime against the store August 1, 2015, and did what his General Manager, Mr. Davis, had advised employees to do the previous week due to the amount of shrinkage from theft in the store. While the employer had issued a new policy regarding shoplifting the claimant had not received a copy of that policy and was not familiar with the employer's policy of allowing shoplifters to leave the store without taking any action against them. The claimant did leave the store without a manager on duty but he did maintain phone contact with the store throughout the seven to ten minutes he was next door at Menards.

The claimant had no intention of violating the employer's counterintuitive policy as he was not made aware of the policy which was a contradiction of what Mr. Davis told the claimant and other employees to do when confronted with a shoplifter. Consequently, the administrative law judge finds the employer has not met its burden of proving the claimant's actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The September 14, 2015, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs