

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AMY L KANE**  
Claimant

**FAREWAY STORES INC**  
Employer

**APPEAL 19A-UI-03752-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/21/19**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge Misconduct

**STATEMENT OF THE CASE:**

On May 7, 2019, the claimant filed an appeal from the May 3, 2019, (reference 01) unemployment insurance decision that denied benefits based on her discharge for insubordination. The parties were properly notified about the hearing. A telephone hearing was held on May 29, 2019. Claimant participated and testified. Also participating on behalf of the claimant was her non-attorney representative Michial Kane. Employer participated through Vice President of Human Resources Theresa McLaughlin and Grocery Manager Diane Sutcliffe. Employer's Exhibits 1 through 8 were received into evidence.

**ISSUE:**

Was the claimant discharged due to disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on March 23, 2019. Claimant last worked as a part-time grocery clerk. Claimant was separated from employment on April 23, 2019, when she was discharged.

On April 19, 2019, there were two incidents in which groceries were left behind by customers in claimant's area. Following the second incident claimant was issued a written reprimand. (Exhibit 4). Claimant asked to review the security footage prior to signing the reprimand, as she did not believe she was the individual responsible for the groceries being left behind. Claimant was told she would be able to review the video, but they needed to finish with the disciplinary meeting first. Claimant refused to sign the reprimand. The reprimand states, "Your signature is intended only to acknowledge receipt of the notice; it does not imply agreement or disagreement with the notice itself or its contents." When claimant refused to sign the reprimand, she was given a second reprimand. (Exhibit 3). The employer's policies, which claimant received a copy of, provide for disciplinary action, up to and including termination, if an employee fails to sign receipt of a reprimand. (Exhibit 2). Claimant was then sent home for the day.

On April 23, 2019, the claimant met with Sutcliffe, Jim Giardino, and Mike Mizour, to discuss the events of April 19. Claimant was advised that she needed to sign the reprimand or she would be discharged from employment. Claimant again asked to see the security video. It was explained to claimant that she needed to sign the reprimand first and she would then be allowed to see the video. Sutcliffe further explained that the video was not readily available, as the April 23 meeting took place at a neutral, off-site location. Claimant continued to refuse to sign the reprimand and was therefore discharged from employment.

## **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.

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). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980).

In insubordination cases, the reasonableness of the employer's demand in light of the circumstances must be evaluated, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The key to such cases is not the worker's subjective point of view but "what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); accord *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993)(objective good faith is test in quits for good cause). For example, in *Green v. IDJS*, 299 N.W.2d 651 (Iowa 1980) an employee refused to sign a warning to acknowledge that she understood why she was being warned. The Court found the refusal to be disqualifying as a matter of law, and did not focus on whether the warning was justified or not. *Green* at 655. The claimant's actions in refusing to do as told "show[ed] an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer." 871 IAC 24.32(1)(a).

In this case, claimant was discharged for refusing to sign a written warning issued to her by the employer. Claimant disagreed with the warning, and wanted to see the security footage prior to signing. The employer told the claimant multiple times that it would allow her to see the video, but that she needed to sign the reprimand first. While claimant may have been upset by the accusations in the written warning and the employer's instance on what procedure to follow, the administrative law judge finds claimant was not reasonable in her decision to not comply with the employer's directive to sign the warning. The warning clearly states that the employee's signature is only to acknowledge receipt of the document and does not imply the employee agrees with the warning. The employer issued claimant a reasonable directive, and claimant had no good reason not to comply with it. The administrative law judge finds claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

#### **DECISION:**

The May 3, 2019, (reference 01) 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.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs