

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SUSAN L SPURGEON
24278 – 40TH ST
BLAKESBURG IA 52536

CIGARETTE OUTLET INC
C/o JOSEPH DEPAEPE
STE 104
319 E 2ND ST
MUSCATINE IA 52761-4100

Appeal Number: 04A-UI-02669-HT
OC: 02/08/04 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Susan Spurgeon, filed an appeal from a decision dated March 2, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 29, 2004. The claimant participated on her own behalf. The employer, Cigarette Outlet, participated by Supervisor Deb Schnyder and Vice President Steve Thompson.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Susan Spurgeon was employed by Cigarette Outlet from October 28, 2002 until February 2, 2004. She was a part-time cashier.

On February 1, 2004, the claimant was seen by a co-worker, and later by the supervisor who was viewing a surveillance videotape, purchasing two packs of cigarettes of the brand her son smoked. Later her son, who is 16 years old, came in and she put the cigarettes in a bag and gave them to him, then he left the store. This is a violation of company policy which prohibits employees from selling, or giving cigarettes purchased by someone else, to a minor. She was discharged on February 2, 2004, by Supervisor Deb Schnyder.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 claimant denies selling cigarettes to a minor, but she was never accused of selling them, only giving them to her son who was still a minor, and having him remove them from the store. Ms. Spurgeon maintained any merchandise purchased during the shift must be removed from the store before closing and she was having her son take them out to her car. However, this is not the policy of the store. The administrative law judge concludes she purchased cigarettes then gave them to a minor while on duty, on company premises, and the minor then took the cigarettes out of the store. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of March 2, 2004, reference 01, is affirmed. Susan Spurgeon is disqualified, and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/d