

**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**

**KRISTY M LUNCEFORD
4245 – 173RD AVE
MAQUOKETA IA 52060**

**THEISENS INC
4949 CHAVENELLE RD
DUBUQUE IA 52002-2630**

**Appeal Number: 05A-UI-11377-AT
OC: 10/02/05 R: 04
Claimant: Respondent (2)**

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
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Theisen's, Inc. filed a timely appeal from an unemployment insurance decision dated October 27, 2005, reference 01, which allowed benefits to Kristy M. Lunceford. After due notice was issued, a telephone hearing was held November 21, 2005 with Ms. Lunceford participating. Human Resources Director Cindy Burdt participated for the employer.

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: Kristy M. Lunceford was employed as a cashier and

salesperson by Theisen's, Inc. from September 12, 2000 until she was discharged on September 28, 2005. The final incident leading to the discharge occurred on September 27, 2005 in an exchange with customer John McCloy. In the company's database, Ms. Lunceford found both a John McCloy and a John Paul McCloy. She attempted to ascertain which of the two the customer was. They became frustrated with one another. The customer made derogatory remarks about Ms. Lunceford's job skills. The exchange ended with Ms. Lunceford suggesting that the customer shop at Theisen's' competitor and that perhaps the customer should run a stop sign and hit someone like his son. Ms. Lunceford was discharged for these comments. She has received unemployment insurance benefits since filing a claim effective October 2, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her work. It does.

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 administrative law judge concludes that the claimant completely crossed into unacceptable behavior by suggesting that the customer hit someone like his son with his vehicle. Whether or not the customer heard the statement is immaterial. The fact that it was uttered so others could hear the claimant wishing for the injury or death of another human being is sufficient to establish misconduct. Benefits are withheld.

Ms. Lunceford has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated October 27, 2005, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$1,404.00.

dj/kjw