

The final incident that prompted the discharge came to the employer's attention on July 15. On that date, Mr. Flaherty learned that Ms. Huff had purchased beer for her 17-year-old nephew. Ms. Huff's former mother-in-law, Audrey Huff, brought the matter to the attention of Mr. Flaherty and provided the receipt from the purchase. Audrey Huff had located the beer in her grandson's bedroom. Ms. Huff was off-duty at the time she purchased the beer for her nephew. At the time Ms. Huff purchased the beer, she intended to make it available to her nephew, who was waiting outside the store. After Audrey Huff provided Mr. Flaherty with the receipt, Mr. Huff reviewed store surveillance records of the transaction and observed Ms. Huff on the surveillance video making the alcohol purchase. On July 16, Mr. Flaherty summoned Ms. Huff to a meeting at which he asked Ms. Huff whether she had purchased alcohol for a minor. Ms. Huff denied having ever purchased alcohol for a minor. Mr. Flaherty asked Ms. Huff to consider her answer. Ms. Huff then indicated that she had, indeed, purchased beer for her nephew, a minor.

The employer has an employee handbook that addresses alcohol and/or illicit drug use, possession, or distribution on store property. The policy states as follows:

The company prohibits the use of *alcohol*, illegal drugs, or any controlled substance, other than authorized prescription drugs *on company property*. *Illegal distribution, possession, or use of any of the above shall be grounds for dismissal, whether on or off the clock.*

(Emphasis added.)

Ms. Huff had received a copy of the employee handbook. In January 2005, Store Director Tim Flaherty joined the staff at the Mason City Hy-Vee. Mr. Flaherty distributed to the store employees a policy statement from C.E.O. and President Richard Jurgens regarding prohibited use of alcohol and drugs. See Exhibit A. The policy statement had been intended only for distribution to store management. The policy did not supersede or alter the policy set forth in the employee handbook.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Huff was discharged for misconduct in connection with her employment. 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).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Violation of a specific work rule, even off-duty, can constitute misconduct sufficient to disqualify a claimant from unemployment insurance benefits. See Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992).

A person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age commits a serious misdemeanor punishable by a minimum fine of five hundred dollars. Iowa Code Section 123.47(4) (2005).

The evidence in the record establishes that on July 15 Ms. Huff purchased alcohol for a minor at the Hy-Vee store where she was employed. Ms. Huff's conduct was criminal, regardless of whether the incident was reported to law enforcement and regardless of whether Ms. Huff was prosecuted for a criminal offense. Ms. Huff illegally distributed alcohol on Hy-Vee property, in violation of Hy-Vee's written policy. The policy specifically indicated that it applied to employees regardless of whether they were on or off the clock. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Huff was discharged for misconduct in connection with the employment. Accordingly, Ms. Huff is disqualified for benefits until she has worked in and been paid wages for insured work equal to

ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Huff.

DECISION:

The Agency representative's decision dated August 31, 2005, reference 05, is affirmed. The claimant was discharged for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account shall not be charged for benefits paid to the claimant.

jt/s