

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC W MARKHAM
Claimant

APPEAL NO. 10A-UI-14427-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMBER'S PRETZELS LLC
AUNTIE ANNES PRETZELS
Employer

OC: 09/26/10
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 18, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 3, 2011. Claimant participated and was represented by Laura Humes, Attorney at Law. Employer participated through owner Amber Bambrough, owner's daughter and store manager Amy Hauge, and store manager Michael Combs and was represented by Tyler Johnston, Attorney at Law.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a store manager from 2008 and was separated from employment on September 28, 2010. Employer received \$90.00 of receipts from a training trip to Lancaster, Pennsylvania from September 19 through 24, 2010 that included purchases for cigarettes, beer, a marijuana bong, but did not submit receipts to cover the advanced per diem total of \$125.00 (\$25.00 per day for lunch and dinner) for meals and \$50.00 for luggage. He did not bring any personal funds with him. Employer did not authorize him to purchase cigarettes and beer with the advance money and specified the limited uses for the funds. Claimant spent money at the Des Moines airport gift shop before leaving town. He had very limited money for meals at the training event. After arriving at the hotel, claimant admitted to Hauge and Combs that he had smuggled a marijuana cigarette in a deodorant cap through airport security. Combs saw the bong claimant purchased as a "souvenir" while sharing a hotel room. Claimant told Combs the marijuana cigarette "was gone the other night" after Combs told him to get rid of it before going to the airport on the return trip. Four hours later he told Combs he was just trying to find out if Hauge would tell Bambrough about it. Hauge loaned him about \$6.00 to eat at the airport on the return trip because he had no money left from the advance. Combs also lent him money for food on the return trip.

He had borrowed money from petty cash without authorization and after having been warned. Claimant's wife interfered in employer's business decisions and interrupted a meeting and confronted a store representative after she was verbally warned to keep out of his work duties. He also falsified time reports. Employer had warned him not to use company money for alcohol. On another business trip to Chicago claimant mentioned he brought his wife's prescription Vicodin with him and offered it to Hauge's stepfather.

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 § 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.

Claimant argues the bong was actually a Burger King water gun and still has it at home but did not provide a photograph of the item at hearing. He also recalls having \$5.00 left at the airport and the other two bought his meal but admits he did not return those funds to the employer. Claimant's denial of the bong purchase and attribution of the statement about the marijuana cigarette as a joke is not credible. The combined reference to marijuana and the possession of a drug pipe, the lack of funds and attendant receipts indicates it is more likely than not that he did as Combs and Hauge reported and misused the employer's travel funds. This conduct was

not business-like or in the best interest of the employer and rises to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The October 18, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs