

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**KATHY A DEWITT**  
Claimant

**FAMILY DOLLAR STORES OF IOWA INC**  
Employer

**APPEAL 14A-UI-11587-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/28/14  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 29, 2014, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 16, 2014. Claimant participated. Employer participated through Chris Funk, Store Manager. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assistant store manager beginning in April 2013 through September 23, 2014 when she was discharged. The claimant knew that she was not to eat or drink any product from the store without first paying for the item. During an investigation and interview on September 17 the claimant admitted that on two occasions she had taken a drink from the cooler and forgotten to pay for it. The last incident involved an open bag of candy under the register she was working at. The claimant did not put the candy there but assumed that it was a coworker's candy and she was free to eat some if she chose to. It was product that was to be wasted and thus was not for employees to eat.

At the end of the interview on September 17 the claimant was told she was suspended but she did not think she would be discharged. She thought that the employer would transfer her to another store. On September 23 she spoke to someone in corporate human resources offices who told her that her employment had ended. The claimant's supervisor, Store Manager Ms. Funk had given the claimant at least one verbal warning about paying for merchandise prior to eating or drinking it. As an assistant manager the claimant was responsible for enforcing the employer's policies.

## 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It is not unreasonable for an employer to expect employees to pay for merchandise from the store. On two prior occasions the claimant took drinks and did not pay for them. She was given at least one verbal warning from her manager. The claimant again ate merchandise that did not belong to her but instead belonged to the store. Her repeated violation of the policies, after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

**DECISION:**

The October 29, 2014 (reference 01) 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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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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