

**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**

**MARGOT J FOSTER
1430 – 64TH ST
DES MOINES IA 50311**

**BLOCKBUSTER INC
c/o SHEAKLEY UNISERVICE
PO BOX 1160
COLUMBUS OH 43216-1160**

**Appeal Number: 04A-UI-06472-HT
OC: 05/16/04 R: 02
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

STATEMENT OF THE CASE:

The employer, Blockbuster, filed an appeal from a decision dated June 3, 2004, reference 01. The decision allowed benefits to the claimant, Margot Foster. After due notice was issued a hearing was held by telephone conference call on July 8, 2004. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Store Manager Dan Schaeffer.

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: Margot Foster was employed by Blockbuster from September 2003 until April 11, 2004. She was a full-time shift leader.

The claimant received warnings on January 26, February 9, and February 16, 2004, regarding poor work performance. These were prompted by customer complaints, observations of the manager regarding closing duties and paperwork which had not been completed, and failure to follow appropriate policies and procedures. The final warning notified her that her job was in jeopardy if there were any further incidents. The manager noted her performance would improve for a short period of time after each warning but would then lapse back to unacceptable levels.

Approximately April 1, 2004, Store Manager Dan Schaeffer received a phone call from a customer who complained about Ms. Foster. The customer stated she had left the store rather than conduct business with Blockbuster because the claimant had been so rude to her own staff in front of several customers. Mr. Schaeffer referred the matter to District Leader Mindi Martinez who told him to consult with the corporate human resources department. This is required before any employee may be discharged.

The store manager submitted the appropriate paperwork to the human resources department and was notified on April 9, 2004, that he should discharge Ms. Foster. He notified the claimant on April 11, 2004, she was discharged.

Margot Foster filed a claim for unemployment benefits with an effective date of May 16, 2004. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

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 had been advised her job was in jeopardy as a result of her conduct and poor work performance. It is evident she was capable of performing to a higher standard as her conduct would improve after each warning. However, the change was not permanent and the final customer complaint made it clear the employer was losing business as a result of Ms. Foster's actions. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of June 3, 2004, reference 01, is reversed. Margot Foster is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/tjc