

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

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**AMENDED**

Appeal Number: 04A-UI-10075-SWT  
OC: 08/15/04 R: 03  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 8, 2004, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on October 11, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Frank Eckert participated in the hearing on behalf of the employer with a witness, Dave Myers.

FINDINGS OF FACT:

The claimant worked full time as store manager for the employer from January 8, 2002, to August 13, 2004. The claimant was informed and understood that under the employer's work rules, employees are not to consume products without paying for them. The employer also imposed sales goals on stores that their average dollar sales per customer were to be no less

than \$29.60 and their average items sold per customer were to be no less than three. The claimant had complained to the regional sales director that including typically small employee purchases of items consumed in the store artificially deflated these statistics. The sales director told the claimant that he would check into this problem but nothing ever was done. Afterward, at every sales meeting, achieving these sales goals was emphasized. Including employee purchases when calculating sales goals has been a constant complaint by store manager to upper management.

The claimant purchased bottled water to drink at work, which cost \$1.09 each. To lessen the impact of the individually ringing up these purchases on sales goals, the claimant began saving the bottles for the water he consumed in a week and ringing them up at the end of the week. The claimant always paid for the water he consumed.

During a visit by loss control officers on August 12, 2004, six empty water bottles were discovered and the claimant admitted that he had not paid for them before drinking them and that he was going purchase them at one time to avoid deflating his sales goals. The employer discharged the claimant on August 13, 2004, for consuming products before paying for them. The claimant had never been counseled or warned for any similar conduct in the past.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. No substantial misconduct has been proven. The employer's representative argued that the employer considered the matter theft from the company, but theft requires an intent to steal, which the evidence does not prove. He made an error in judgment but it was isolated when the claimant record of past discipline is considered.

DECISION:

The unemployment insurance decision dated September 8, 2004, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits provided he is otherwise eligible.

saw/s/kjf