

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

STACY L FISHNICK  
326 W LOCUST ST APT 2  
DUBUQUE IA 52001-4554

GOODWILL INDUSTRIES OF NE IA INC  
2640 FALL AVE  
WATERLOO IA 50701

Appeal Number: 06A-UI-01830-JTT  
OC: 01/15/06 R: 04  
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, 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Stacy Fishnick filed a timely appeal from the February 6, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 2, 2006. Claimant participated. Human Resources Director Connie Stroh represented the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Stacy Fishnick was employed by Goodwill Industries of Northeast Iowa as a full-time sales associate from January 29, 2005 until January 12, 2006, when Retail Director Star Rupe and Store Manager Linda Murray discharged her.

The incident that prompted the discharge occurred on January 9, 2006. The employer has a policy that merchandise must be on the sales floor for 24 hours before an employee is allowed to purchase the merchandise. The purpose of the policy is to make certain that customers, not employees, have the first opportunity to purchase donated merchandise. The policy is set forth in an employee handbook. Ms. Fishnick received a copy of the handbook and had otherwise been advised of the policy. On January 9, 2006, Ms. Fishnick violated the policy by having another employee purchase books for her after the books had been on the sales floor for only two hours. Ms. Fishnick knew she was violating the policy at the time the violation took place, but calculated that the violation would result in a short suspension, not discharge. Ms. Fishnick believed it was common practice among the employees to violate the 24-hour waiting period policy. Ms. Fishnick had not previously violated the 24-hour waiting period policy. Ms. Fishnick had received one prior verbal reprimand in August 2005 for a dissimilar matter.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Fishnick was discharged for misconduct in connection with the employment that would disqualify her for unemployment insurance benefits. It does not.

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 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).

The evidence in the record indicates that the employer discharged Ms. Fishnick because Ms. Fishnick violated the employer's reasonable policy by purchasing merchandise earlier than she was supposed to under the policy. While the decision to discharge Ms. Fishnick in connection with the incident was within the employer's discretion, the conduct that prompted the discharge does not rise to the level of substantial misconduct that would disqualify Ms. Fishnick for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Fishnick was discharged for no disqualifying reason. Accordingly, Ms. Fishnick is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Fishnick.

DECISION:

The Agency representative's decision dated February 6, 2006, reference 01, is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

jt/tjc