

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRENDA J HELLYER**  
Claimant

**APPEAL NO: 13A-UI-02820-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 02/03/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 28, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 9, 2013. The claimant participated in the hearing. Maggie Worrall, Training and Development Specialist and Wayne Lamoureux, Grocery Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time grocery clerk for Fareway from September 9, 1992 to November 7, 2012. On November 5, 2012, Grocery Manager Wayne Lamoureux directed the bakery department to mark certain containers of baked goods down to \$1.99 each and they did so. After the claimant clocked out at 12:30 p.m. she picked up some groceries, including two of the \$1.99 baked goods containers, and went through the checkout lane where the cashier noticed the “1” had been scribbled out with a black marker, leaving the price of the baked goods at \$.99 rather than \$1.99. The cashier asked the claimant who changed the price and the claimant stated she did. After the claimant left the store the cashier reported the incident to Grocery Manager Wayne Lamoureux.

On November 6, 2012, Mr. Lamoureux confronted the claimant about the incident the previous day and the claimant admitted she scratched off the “1” in front of the \$.99 markdown price. Mr. Lamoureux asked the claimant why she did it and she explained she did not have enough money to pay for both baked goods containers so consequently she marked off the “1” in front of the \$.99 on each package and took them to the register. Mr. Lamoureux asked the claimant if she had ever done that in the past and she stated she had not.

On November 7, 2012, Mr. Lamoureux met with the claimant before she started her shift and told her she placed him in a difficult position as the employer has a zero tolerance policy related to employee theft and the claimant's actions amounted to stealing. Mr. Lamoureux then informed the claimant her employment was terminated for theft.

### **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 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.

The claimant admits to changing the price of the two baked goods containers, from a total of \$3.98 for the two containers to \$1.98, cheating the employer out of \$2.00. She had no authority to price switch and stated she changed the price of the baked goods items because she did not have enough money with her to purchase the baked goods at the stated, already marked down, price. While the claimant believes her actions warranted a lesser punishment, such as a three day suspension, a theft is a theft regardless of the amount of money involved, the value of the items taken, or how long the employee has been employed by the employer, and the claimant violated the employer's zero tolerance of theft policy. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and

obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The February 28, 2013, 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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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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