

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**TAIVIAN M JORDAN**  
Claimant

**APPEAL NO: 19A-UI-04813-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 05/12/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant, Taivian M. Jordan, filed an appeal from the June 4, 2019, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 10, 2019. The claimant participated personally. The employer, Fareway Stores Inc., participated through Maggie Worrall, payroll/human resources. Tim Burke, general manager, also testified. Employer Exhibit 1 was admitted. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a market clerk and was separated from employment on May 18, 2019, when he was discharged for theft of product.

When the claimant was hired, he was trained on employer rules and procedures. These included rules that prohibit employees from preparing their own meat product, checking themselves out, and requiring a receipt. The employer also had a rule against using the back door to leave the premises and the claimant acknowledged his store manager, Mr. Burke, had previously told him not to do so.

The claimant was discharged for a single incident that occurred on May 17, 2019 after an employee reported the claimant leaving the premises out the back door with a bag containing a full beef tenderloin and two catfish. The employer on May 18, 2019 reviewed video footage in the store, including outside the back door and the front registers. There was no evidence of the claimant going to the front of the store and making a purchase from the time he left his prior shift through the shift on May 17, 2019. The video footage outside the back door confirmed the

claimant leaving with the bag and product. The employer also checked sales receipts to see if there had been a transaction which would correspond with the tenderloin and catfish. It could not locate one.

The claimant was confronted by management on May 18, 2019. He had consumed the product by this point and could not physically return it. When confronted about the transaction, the claimant could not identify when he purchased the item, which clerk rang him up, or produce proof of purchase, such as the receipt or proof of the transaction. He stated he would have paid by credit card but did not provide proof of purchase to the employer or at the time of hearing. He didn't know what time he had made the transaction, citing to it being a busy day. He had no explanation for going out the back door instead of the front door, except to say it made the walk home shorter. (Mr. Burke estimated the back door shaved approximately 20 seconds off the walk instead of using the front door.) The employer gave the claimant an opportunity to produce proof of the transaction and when he could not, he was discharged.

The employer spoke to law enforcement and indicated it did not wish to press charges if the product was paid for, and so the next week, the claimant's friend brought in money on behalf of the claimant to pay for the \$95.00 product he removed on May 17, 2019 without paying for it.

#### **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 unemployment insurance law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

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).

The employer has the burden of proof in establishing disqualifying job related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. In this case, the claimant deliberately disregarded the employer's interest and knowingly violated a company policy. The employer did not immediately discharge the claimant based upon suspicion of theft, but rather checked receipts and video footage throughout the store which would confirm he had made the purchase before removing \$95.00 worth of meat product from the store. The employer also gave the claimant an opportunity to offer proof of the transaction.

Honesty is a reasonable, commonly accepted duty owed to the employer. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Reasonably, if the claimant had made the purchase just the day before, it would not have been unreasonable for him to recall who rang him up, when he bought the product, a copy of the receipt or proof of the transaction by way of a bank or credit card statement (many of which are available instantly online). The claimant's conduct of removing the product which he prepared himself, without proof of payment, and then departing the store through the back door, reasonably appears to have been an attempt to conceal his conduct. The fact that the claimant paid for consumed product a week later does not negate the fact he removed product without payment on May 17, 2019. This constitutes theft. Based on the evidence presented, the administrative law judge concludes the claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

**DECISION:**

The June 4, 2019, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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