

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHRYN A SCOTT
Claimant

APPEAL NO. 07A-UI-04596-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY VIDEO MOVIE CLUB INC
Employer

**OC: 04/08/07 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kathryn Scott (claimant) appealed a representative's April 26, 2007 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Family Video Movie Club (employer) for wanton carelessness in performing her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 23, 2007. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired in late February 2007, as a part-time sales clerk. The claimant read the schedule wrong and did not appear for work on a Sunday when she was scheduled.

Prior to performing an evaluation for the claimant, the employer asked other employees about her performance. Other employees could not think of anything except maybe the claimant did not spend quite enough time working the drop box. The employer told the claimant this and that customer's complained that the claimant did not show where a movie was located and did not take a late fee off the bill. The claimant thanked the employer for the information and said she would try harder to work at the drop box but the complaints must have been against a different employee because she had not treated any customer in that fashion. The next day the claimant worked she spent more time at the drop box. Her supervisor told her to stop working the drop box and move back to the counter.

The following day, April 11, 2007, the employer terminated the claimant for not running the drop box, customer complaints, and failure to appear for work on one day. The claimant felt the supervisor made the complaint calls because he did not like the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not participate in the appeal hearing and no evidence of misconduct was presented at that hearing. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 26, 2007 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw