

Employees wear boots while at work, and the employer pays for them via a "boot allowance." Vendors come to the facility periodically so workers may choose the proper style and size for their needs. In August 2005 a vendor had a table which would allow employees to purchase other boots and shoes for their own use. The claimant ordered boots for her husband and made a down payment. The vendor assured her the remainder of the price would be deducted from her pay check.

Ms. Baltimore picked up the boots from the office of Safety Director Dan McAuliffe and left him a note telling him she had taken hers, along with her clock number and telephone number if he had any questions. He did call and ask her which boots she had taken and she stated it was the pair she had ordered for her husband.

The safety manger consulted with Assistance Human Resources Manager Kelly Roemer and the claimant was charged with theft of the employer's property because somehow the cost of the boots was charged to Kraft Pizza instead of being deducted from Ms. Baltimore's check.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is 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 asserted Ms. Baltimore attempted to order boots through a vendor to be paid for by the company which were not for her work purposes. The claimant had countered that she believed she was purchasing the boots for her husband through a payroll deduction plan. The employer's assertion of theft is somewhat impaired by the fact the claimant left a detailed note for the safety manager explaining she had taken the boots she had ordered and giving him all the pertinent information regarding her identity and how to contact her if he had any questions. It is also impaired by the fact Ms. Baltimore made a down payment on the boots from her own funds. The administrative law judge does not believe this to be the actions of a person attempting to perpetrate a theft or fraud from the employer. It is entirely likely there was some miscommunication between the vendor and the claimant, or the vendor and the employer, but this is an error, not misconduct.

The employer has failed to establish the claimant had any history of unreliability or irresponsibility during her seven years of employment; and one error in judgment or miscommunication does not constitute misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of September 8, 2005, reference 01, is affirmed. Martha Baltimore is qualified for benefits provided she is otherwise eligible.

bgh/kjw