

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SADIKA BAJRIC
Claimant

KOHL'S DEPARTMENT STORES INC
Employer

APPEAL 18A-UI-10252-LJ
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/09/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 10, 2018 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for violation of a known company rule. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa, on Wednesday, October 24, 2018. The claimant, Sadika Bajric, participated along with witness Salim Bajric. The employer, Kohl's Department Stores, Inc., did not appear for the hearing and did not participate in the hearing. Bosnian/English interpreter Karmela Lofthus provided interpretation services for the hearing. Claimant's Exhibit A was received and admitted into the record.

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: Claimant was employed part-time, most recently as a cashier and trainer, from August 25, 2008, until September 12, 2018, when she was discharged. Claimant last reported to work on September 8, 2018. That day, after approximately two hours of work, the employer called claimant into the office. She was asked about some purchases she made over Labor Day weekend. (Exhibit A) After this conversation, claimant was sent home and she was discharged four days later. Claimant allegedly mis-applied a coupon. Claimant explained that she used the Kohl's Pay app which is tied to her account and automatically applies markdowns, discounts, and coupons. Claimant made two separate purchases on the date in question, because one of the items was a gift and she wanted a gift receipt. Claimant was not explicitly told how what she did violated any of the employer's policies. Claimant had never been warned for violating any policy regarding discounts or coupons, and she did not receive any training on discounts and coupons. Claimant was not aware that her job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Iowa Code § 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.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established...

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case, the employer did not appear for the hearing and did not submit any documentation in lieu of in-person participation in the hearing. Claimant provided unrefuted testimony that she did not do anything inappropriate when making her purchases. She also testified that she had no warnings and no training on the issue at hand. The employer has not met its burden of proving that claimant was discharged from employment for disqualifying misconduct. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The October 10, 2018, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn