

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARAH DAMM**

Claimant

**APPEAL NO: 17A-UI-07938-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SALLY BEAUTY SUPPLY LLC**

Employer

**OC: 06/25/17**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 27, 2017, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge, Julie Elder on August 24, 2017. The claimant participated in the hearing. Jaclyn Jordan, District 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 full-time store manager for Sally Beauty Supply from October 10, 2016 to June 29, 2017. She was discharged for confronting a suspected shoplifter on social media in violation of the employer's policy.

On June 21, 2017, a male and female customer were in the store and the two employees present were suspicious they were shoplifting. Another customer and her grandchild, who was approximately seven or eight years old, were also in the store. When they went to check out, the child told the employees she thought the female customer was stealing. The employees, who had been watching the couple in the mirrors, then went out to the floor and watched the couple directly. They did not observe the couple steal anything and they left after checking out with a bottle of nail polish and another item. The employees checked the store's inventory system on the computer and saw that a nail kit worth around \$50.00 was missing. They left a note for the claimant that there had been a theft that evening and one of the employees recognized the male customer as the brother of someone with whom she went to school. The claimant called one of the employees June 22, 2017, to get the details of the incident. She then called the police and an officer came out. She gave the officer a statement and they agreed the customer would be banned from the store. The officer stated he would contact the claimant after he talked to the customer. The claimant had the customer's name, address, and phone number from the sale of the items the customer did buy. The officer called the claimant a short time later and said he could not find the customer's phone number but if the claimant saw the

customer or talked to her she could tell him she was banned from the store. The officer told the claimant to notify the police department if she told the customer about the ban.

The claimant went on Facebook and found the customer and using Facebook messenger she sent the customer a message stating, "You and your husband were identified as thieves last night by employees and customers of Sally Beauty in Cedar Falls. I have contacted the police, whom are looking to contact you. I'm just letting you know, per myself and the CFPD you are banned from entering Sally Beauty in Cedar Falls for life. If you want you can always bring the stolen nail tech kit back. Have a great day!" The claimant then emailed the district manager to tell her what happened and that she had contacted the police. She did not tell the district manager about the Facebook message. The employer's store in Waterloo notified the district manager that the male customer was trying to reach her about an incident that happened in the Cedar Falls store. The district manager spoke to the customer and learned about the Facebook message at that time. The customer was extremely upset that he and his girlfriend were being accused of something they did not do and wanted to know how the claimant found the female customer on Facebook. He also stated he was getting an attorney and calling the home office. The district manager emailed the Cedar Falls store and asked all employees involved to provide written statements and what action they took. On June 23, 2017, the district manager turned the statements in to human resources and the legal department and the decision was made to terminate the claimant's employment June 29, 2017, for posting inappropriate and threatening remarks to the customer via social media.

The employer's policy requires employees to be 100 percent sure that a customer has shoplifted; must be sure she sees the suspected shoplifter the entire time she is in the store, must see the item in the customer's hand; and then contact the police, the district manager, and loss prevention. Employees are never to approach or confront a shoplifter and the claimant was aware of that policy. The employer also has a social media policy stating any inappropriate posting including discriminatory remarks, harassment and threats will not be tolerated and may subject the employee to disciplinary action up to and including termination.

#### **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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant was not in the store when the alleged shoplifting occurred and consequently could not and did not follow the employer's policy on shoplifting. The employees who were in the store June 20, 2017, did not witness the customer shoplift but instead relied on the word of a seven or eight year old customer in the store with her grandmother as well as their own suspicions. While the employees believed the female customer stole the nail kit, they did not see her do it. Despite all of those factors the claimant took it upon herself to contact the customer directly through Facebook messenger after she spoke to the police. The claimant had the customer's name, phone number and address, from the sale but when the police told the claimant it could not find her phone number the claimant did not give it to the officer but instead contacted the customer directly through Facebook messenger. Although the claimant's message was not particularly harassing or threatening, it was inappropriate and a violation of the employer's policy prohibiting employees from confronting a suspected shoplifter. The claimant's message also violated the employer's social media policy. The claimant said the customer and her companion "were identified as thieves." Regardless of the claimant's belief or her retail experience, it was not her place to send the suspected shoplifter the Facebook message. She did notify the district manager about the possible shoplifting incident but did not tell her she sent the customer a message through Facebook messenger which indicates the claimant knew her actions were unacceptable and the employer would not approve of what she did.

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 July 27, 2017, reference 02, 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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