

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES A TURNER**  
Claimant

**APPEAL NO. 13A-UI-04836-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOODS INC**  
Employer

**OC: 04/29/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated April 23, 2013, reference 02, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on May 30, 2013. Claimant participated. The employer participated by Mr. Mark Pearson, Store Director.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: James Turner was employed by Foods, Inc. from August 22, 2009 until April 5, 2013 when he was discharged from employment. Mr. Turner was employed as a part-time general worker and was paid by the hour. His immediate supervisor was the store director.

Mr. Turner was discharged on April 5, 2013 after he admitted misappropriating funds via an ATM machine that was located in the employer's facility. Mr. Turner discovered an ATM card in the machine. Although the claimant was aware that the card was not his property, Mr. Turner nevertheless obtained \$60.00 from an unauthorized use of the card using the ATM machine located in the store. Mr. Turner then turned the card in and reported that he had found it. Subsequently, the police investigated and Mr. Turner was identified as the individual who obtained the \$60.00 via the unauthorized use of the ATM card.

Because the offense took place on company property during the time that Mr. Turner was working and the ATM machine was located on company property, Mr. Turner was discharged from employment. Company policy prohibits theft from misappropriation and the employer concluded that Mr. Turner had engaged in an illegal act while on premises during working hours.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Inasmuch as the evidence in the record establishes that Mr. Turner knowingly engaged in unlawful misappropriation of funds while on company property during working hours, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

## DECISION:

The representative's decision dated April 23, 2013, reference 02, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in

and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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