

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT R CLAY**  
Claimant

**APPEAL NO. 14A-UI-12135-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS**  
Employer

**OC: 10/26/14  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Robert Clay (claimant) appealed a representative's November 17, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Team Staffing Solutions (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 12, 2014. The claimant participated personally. The employer participated by Sarah Fiedler, Human Resources Generalist. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 6, 2014, as a temporary full-time production laborer assigned to work at Winegard. The claimant signed for receipt of the employer's handbook on December 6, 2013, before he started his assignment, but the claimant did not remember receiving it.

Winegard had regular meals to raise funds for the less fortunate. Employees who ate the food could donate money in a jar. A Winegard employee saw the claimant take money from the jar on October 30, 2014, and reported it to the employer. The employer questioned the claimant and he returned \$20.00. Winegard terminated the claimant on October 30, 2014. The employer terminated the claimant on October 31, 2014.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was 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.

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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the employer's testimony to be more credible. The employer provided three statements supporting its case. The first statement was from Lou Baccam who saw the claimant take the money. The second statement was from Mike McCullough who heard the claimant admit to taking the money. The third statement was from Miranda Coleman who heard the claimant admit to taking the money.

#### **DECISION:**

The representative's November 17, 2014, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged

from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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