

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CHRISTINA R BUTLER
105 – 3RD ST NE
STATE CENTER IA 50247-1034**

**FAREWAY STORES INC
2300 E 8TH
BOONE IA 50036**

**Appeal Number: 06A-UI-02394-LT
OC: 02-05-06 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the February 22, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 16, 2006. Claimant did participate. Employer did participate through Kim Garland and Harold Youngblood.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time clerk September 10, 2001 through February 10, 2006 when she was discharged. On January 30 and 31 there were six different \$5.00 coupons rung up but no coupons in claimant's cash drawer or other transactions included with the phantom coupons but the drawer balanced for the day so employer did not notice the issue until coworker Mary Kerr said she saw claimant remove coupons from her purse on January 30 and say they still needed

to go into the drawer. Employer then investigated the last nine days of stand alone transactions when she worked as a checker and found similar issues on January 30 for two coupons at 2:30 p.m.; January 31 with two coupons at 7:30 p.m., and another two at 6:17 p.m. The \$5.00 coupons are rare and employer usually has no more than one or two per week for higher priced items such as vitamins.

When confronted, claimant could not explain how this happened. She has a password to sign in on the cash register and is supposed to log off when she steps away so no one else uses her drawer. The coupon discrepancies did not occur on days when claimant was not working. Claimant has been charged with fifth degree theft and has pleaded not guilty.

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:

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).

Claimant's falsification of the register record for payment or deduction of six \$5.00 coupons without an accompanying purchase or actual coupons is theft and is misconduct. Benefits are denied.

DECISION:

The February 22, 2006, reference 01 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.

dml/kkf