

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHARA D HARRINGTON**  
Claimant

**APPEAL NO: 14A-UI-01746-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST PROVISIONS INC**  
Employer

**OC: 01/12/14  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Midwest Provisions, Inc. (employer) appealed a representative's February 6, 2014 decision (reference 01) that concluded Shara D. Harrington (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was convened on March 10, 2014, and reconvened and concluded on April 2, 2014. The claimant participated in the hearing. Barb Stork appeared on the employer's behalf and presented testimony from one other witness, Sherry Bathke. During the hearing, Employer's Exhibits A, G, H, N, and K and Claimant's Exhibit One were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on or about March 26, 2013. She worked part time (about 25 hours per week) as a prep person in the employer's Waterloo, Iowa industrial site cafeteria. Her last day of work was January 13, 2014. The employer discharged her on January 15, 2014. The reason asserted for the discharge was not turning in a receipt for her lunch to the cashier to put into the cash drawer.

The employees are allowed a \$3.50 allowance for food each day. When they charge food against their account, they are to turn in the receipt to the cashier. In November the claimant had been given a warning for failing to have a receipt turned into the cashier for food she had gotten against her allowance. On January 13 the claimant had already had some food earlier during her shift and then later did not have enough remaining money on her account to get any

more food. She approached an assistant manager and asked him to buy some food for her. He apparently thought she meant that she did not have her card with her and that she wanted to use some of her credit for the food. He bought the food for the claimant using company credit and gave her the receipt. She assumed that he had just bought the food himself and would have turned in the receipt to the cashier himself if it had been necessary.

Because the employer concluded that the claimant had again and intentionally violated the policy about taking care of receipts for food she was purchasing, the employer discharged the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her requesting the assistant manager to buy her food on January 13 and then not turning in the receipt for the food that he had purchased. This situation is not the same as where the claimant had previously purchased food herself and had not turned in the receipt. Under the circumstances of this case, the claimant's not understanding that she should also have turned in a receipt for the food that someone else had purchased for her was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's February 6, 2014 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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