

**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**

**SHANE O RILEY
718 ENFIELD DR
PO BOX 416
BUFFALO IA 52728**

**REGIS CORP
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000**

**Appeal Number: 05A-UI-08045-HT
OC: 07/03/05 R: 04
Claimant: Respondent (2)**

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)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Regis, filed an appeal from a decision dated July 28, 2005, reference 01. The decision allowed benefits to the claimant, Shane Riley. After due notice was issued, a hearing was held by telephone conference call on August 30, 2005. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Area Supervisor April Kerb, Salon Manager Kitte Eikenberry, Cosmetologist Jessica Coppess and Stylist Alicia Medina. The employer was represented by Employers Unity in the person of Tom Lindquist.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Shane Riley was employed by Regis from February until June 28, 2005. He was a full-time stylist.

On June 26, 2005, Salon Manager Kitte Eikenberry was notified by two different stylists that Mr. Riley had done services on several clients on June 25 and 26, 2005, and he did not charge them the full price. In addition, he had not put the clients in the book as required, and had not charged them full price for products he had sold them. These all constitute violations of the company policies, and the claimant had received these policies at the time of hire.

Ms. Eikenberry had the stylists submit written statements about what they had seen and then consulted with Area Supervisor April Kerb. The salon manager discussed the allegations with the claimant on June 28, 2005, and he denied the incidents, accusing the other stylists of lying. However, Mr. Riley had received a prior written warning in March 2005 for not charging a client for services he had performed and the employer found his denial to lack credibility. He was discharged by Ms. Eikenberry at the end of that meeting.

Shane Riley filed a claim for unemployment benefits with an effective date of July 3, 2005. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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).

The claimant had not only received a copy of the company policies governing the charging of clients for all services given, he had also been warned for failing to do this on the prior occasion. The record establishes he continued to violate the company policies and did not charge clients full price for services and products they received. This is essentially theft of the employer's resources and products and is conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of July 28, 2005, reference 01, is reversed. Shane Riley is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjw