

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

WILLIE J PEDERSON  
PO BOX 186  
BODE IA 50519-0186

RIVER VALLEY GAS & GROCERY LLC  
THE GENERAL  
1781 - 120<sup>TH</sup> ST  
BODE IA 50519-8520

Appeal Number: 06A-UI-03684-DWT  
OC: 02/05/06 R: 01  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge or Suspension  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

River Valley Gas & Grocery LLC (employer) appealed a representative's March 22, 2006 decision (reference 02) that concluded Willie J. Pederson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 20, 2006. The claimant participated in the hearing. The claimant's potential witness was not available for the hearing. Ron Christianson, the owner, appeared on the employer's behalf. 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.

ISSUES:

Did the employer discharge or suspend the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer again on July 11, 2005. The claimant worked as a part-time cashier. The employer noticed a shortage and decided to have his brother work at the store in an attempt to find where or how the shortages occurred.

When the employer's brother worked with the claimant, the claimant's daughter came in. The claimant's daughter got a cup of cappuccino and started to walk out without paying for the coffee. When the employer's brother asked if she was going to pay for the coffee, the claimant's daughter indicated she did not have any money with her but would bring back money to pay for the coffee, which she did. The employer's brother also believed one day when the claimant was closing out a drawer, the drawer was \$30.00 short.

When the employer reviewed tapes of various days, he noticed the claimant's daughter usually came to the employer's store when the claimant worked. Each time the claimant's daughter got a cup of cappuccino and did not pay for it. The employer noticed other problems also.

When the employer talked to the claimant the claimant acknowledged her daughter did not pay for any cappuccino she took from the store and the claimant did not mark the cappuccino as a beverage the claimant would pay for later. The claimant thought her daughter did enough around the store and for the employer that she deserved free coffee whenever she came to the store.

On February 6, 2006, the employer told the claimant she was going to take a few days off. The employer did not schedule the claimant to work, because the employer wanted to work with her to make sure she did everything correctly. The employer has not scheduled the claimant to work again.

The claimant established a claim for unemployment insurance benefits during the week of February 5, 2006. The claimant filed claims for the weeks ending February 11 through April 15, 2006. The claimant received a total of \$936.00 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges or suspended her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in

judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant gave her daughter free cappuccino whenever her daughter came to the store. The claimant did not ask the employer if she could do this and the claimant did not make a note of the beverages her daughter took without paying for them. The claimant acknowledged she did not have the authority to give her daughter free coffee. While the amount for one coffee may be small, the claimant intentionally made the decision her daughter deserved free coffee whenever she came to the store. The claimant's failure to talk to the employer about giving her daughter free coffee constitutes a substantial disregard of the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct. As of February 5, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending February 11 through April 15, 2006. The claimant has been overpaid a total of \$936.00 in benefits she received for these weeks.

#### DECISION:

The representative's March 22, 2006 decision (reference 02) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 5, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending February 11 through April 15, 2006. The claimant has been overpaid and must repay a total of \$936.00 in benefits.

dlw/kkf