

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHELLEY S ANDERSON
Claimant

APPEAL NO. 06A-UI-11300-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DALE'S CORNER STORE
Employer

**OC: 11/06/05 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 14, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 11, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Chad Peterson. Dale Thompson participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time for the employer as a convenience store clerk from August 7, 2006, to October 10, 2006. Dale Thompson, the owner, was the claimant's supervisor.

On October 10, 2006, the claimant had a friend, Kevin Hagge, do two errands for her while she was at work. He paid her car insurance and purchased some over-the-counter benadryl medication because she was suffering from allergies. When Hagge arrived at the store, the claimant met him by the side of the building to give him the keys to her car so he could put the car insurance receipt and medication in her car. When she went outside, she took a trash can to the dumpster and dumped it. The claimant did not deposit any merchandise from the store into the dumpster.

Two sheriff deputies observed what had happened and reported it to Thompson. The deputies believed that Hagge had taken something from the dumpster. Thompson could not determine that there was anything missing from the store but was convinced that the claimant and Hagge were engaged in theft. On that basis, Thompson discharged the claimant on October 12, 2006.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The evidence fails to prove the claimant was involved in theft from the back. The claimant testified credibly about her actions on October 10, 2006, and while the employer had a

reasonable suspicion, a suspicion does not meet the standard of proving by a preponderance of the evidence that the claimant committed misconduct.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated November 14, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css