

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 12, 2004. She worked part time (28 to 33 hours per week) as a sales associate in the employer's Muscatine, Iowa store. Her last day of work was August 22, 2005. The employer discharged her on that date. The reason asserted for the discharge was misuse of her store discount card.

The employer has a policy regarding the use of employees' store discount cards that allows either the employee, the employee's spouse, or the employee's dependent children to use the card. On August 17, 2005 the claimant was in the employer's Des Moines, Iowa store with her mother. They made two transactions using the claimant's discount card – one for the claimant's mother where she purchased some food items not covered by the discount and then a personal sanitary product; the total value of the discount was \$1.58 – and the second for the claimant's own purchase of pop in which she received a discount of \$1.03. When questioned about the transaction, the claimant immediately acknowledged that she had used her card on her mother's purchase. While the claimant was aware the employer had a policy regarding misuse of the discount card, she had not realized that she could not use it for her parents. The policy provides that a violation of the policy can result in discipline including counseling, coaching, or up to termination. The claimant had never received any prior counseling or coaching for a similar or any other type of infraction.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue 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 questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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).

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is her use of her discount card on her mother's transaction on August 17, 2005. Under the circumstances of this case, the claimant's use of the card for her mother was 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 September 12, 2005 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.

Id/s