

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARGARET J PHILLIPS**

Claimant

**APPEAL NO: 14A-UI-05824-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOODWILL INDUSTRIES OF NE IA INC**

Employer

**OC: 05/11/14**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Margaret J. Phillips (claimant) appealed a representative's June 3, 2014 (reference 01) decision that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Goodwill Industries of Northeast Iowa, Inc. (employer). After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on June 30, 2014. The claimant participated in the hearing. Tom Kuiper, of Equifax/TALX Employer Services, appeared on the employer's behalf and presented testimony from one witness, Richard Carter. 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 denied.

**FINDINGS OF FACT:**

After a prior period of employment with the employer, the claimant most recently started working for the employer on January 28, 2011. She worked full time as a utility worker at the employer's Cedar Falls, Iowa store. Her last day of work was May 7, 2014. The employer discharged her on May 9, 2014. The stated reason for the discharge was theft.

On April 28 the claimant worked a shift from 4:30 p.m. until about 10:50 p.m. She left the building at the end of her shift and then reentered. She went to an area where the employer stored salvage items and rummaged through the items. She then left with a purse that was not hers. The employer discovered the incident when it was reviewing video surveillance footage on April 30 in conjunction with investigating an unrelated incident of theft.

The claimant asserted that a customer had paid for the item and then given it to her and that she had set the purse aside and then retrieved it when she reentered the building, but she did not provide any substantiation for that claim.

**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); Iowa Code § 96.5-2-a.

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. Rule 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. Rule 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

While the claimant denied stealing the purse and asserted that someone had paid for it and given it to her, she provided no evidence to substantiate this claim. While the employer's information as provided might not be sufficient to establish by the criminal evidence standard that beyond a reasonable doubt the claimant stole the purse, it is sufficient to establish by a preponderance of the evidence she had done so, that it is more likely than not. The claimant's taking of the purse shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's June 3, 2014 (reference 01) decision is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 9, 2014. This disqualification continues until the claimant 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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