

**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**

**ROBIN SCARCELLO
206½ N CLARK APT #1
FOREST CITY IA 50436**

**WALDORF LUTHERAN COLLEGE ASSN
WALDORF COLLEGE/BUSINESS OFFICE
106 S 6TH ST
FOREST CITY IA 50436**

**Appeal Number: 05A-UI-06457-ET
OC: 05-15-05 R: 02
Claimant: Appellant (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 for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 7, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call in Des Moines, Iowa, before Administrative Law Judge Julie Elder on July 8, 2005. The claimant participated in the hearing with Housekeeping Supervisor Karrie Johnson. Mary Anderson, Employee Benefits Coordinator, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time housekeeper for

Waldorf Lutheran College from September 1, 2003 to May 5, 2005. The employer began its annual summer cleaning in late April/early May 2005, and discovered a carpet-cleaning machine was missing. The supervisor asked all employees to check to see if they could find it, and the claimant indicated she had not seen it. During the investigation the baseball coach stated he saw the claimant load the machine into her car over Christmas break. On May 4, 2005, the supervisor asked the claimant if she had the machine, and the claimant said she did not. When the supervisor told her someone saw her loading it into her car she still denied it. The supervisor stated that the machine cost \$1,500.00 and if it was not returned by the following morning, the police would be notified and further action would be taken. The claimant still denied having taken the machine. The following day, however, the machine appeared in the break room. The claimant stated she now remembered borrowing the machine over Christmas break and taking it to her boyfriend's house and leaving it there. She forgot about it until the employer began searching for the machine. Karrie Johnson, Housekeeping Supervisor, testified that the claimant was "scatter-brained," and Ms. Johnson did not believe the claimant intentionally took and machine with the intent to deprive the employer of the machine. The employer allowed employees to borrow equipment but requires them to ask a supervisor prior to taking the equipment, and the claimant failed to do so. The employer terminated the claimant's employment for theft under its dishonesty clause.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the claimant obviously took the carpet-cleaning machine home over Christmas break, the evidence does not establish conclusively that she did so with the intent of keeping it permanently. Although the claimant used poor judgment in taking the machine without permission and failing to return it in a reasonable amount of time, the administrative law judge cannot conclude that the claimant intended to steal the machine and permanently deprive the employer of the use of the machine. Consequently, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The June 7, 2005, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjw