

It is the Employer's policy not to give away, or use damaged materials. (12:20) The Employer would "...either try to fix point of sale materials or get rid of them..." for the sake of keeping control of the brand names for the brewers. (12:22-12:50; 13:04-13:28) If an employee alters paperwork or takes something they shouldn't take, it is considered a fraudulent act against the company. (13:31-13:58) Mr. Starbeck had signed in acknowledgment of receipt of the personnel manual (12:52-13:21) that contained the policy regarding protocol for broken or damaged property. (13:40)

The following Monday, April 14, 2014, S.M. told a manager that he no longer wanted to work with the Claimant, as he had issues with Starbeck. (15:37-15:46; 16:00) S.M. also reported that the Claimant left one of the umbrellas at his brother's residence, which immediately triggered an investigation. (7:16-7:24) A review of the warehouse video verified that Starbeck and S.M. took umbrellas the warehouse and loaded them in a vehicle on April 11th. (10:00-10:17; 16:13-16:23) Using their GPS system, the Employer also verified that the Claimant and S.M. stopped at an unlicensed premise, which was identified as his brother's residence, that same day. (7:56-8:45; 8:53; 16:25-16:35) There was no warehouse paperwork to reflect this transaction. (10:33-11:03) An e-mail was sent to Jane Fahr, the human resources director, regarding the matter.

The Employer confronted the Claimant about the events of April 11th to which he, initially, denied taking the broken umbrella to his brother. (11:38-11:48) Eventually, the Claimant admitted that he took the broken umbrella so his brother could use it for the Sturgis Festival. The umbrella had a \$100-150 dollar value. (14:28-14:38) The Employer discharged the Claimant for theft of an umbrella. (5:52-6:03)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993).

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 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events.

The Employer provided unrefuted testimony about its policy that prohibits the giving away or use of damaged property for which Mr. Starbeck signed in acknowledgement of receiving all the Employer's policies and procedures. When the Claimant took the broken umbrella to an unlicensed premise to provide for his brother's use (an *unintended* customer), he violated that policy. Not only was his action against company policy, the Employer's surveillance and warehouse records established that the Claimant did not document this inventory leaving the warehouse, nor its return, which was also against the Employer's proper procedures. His failure to document the umbrellas that he took, returned, and failed to return one of them implied fraudulence in maintaining warehouse records. The fact that he handled the entire incident in this manner speaks to the stealthy nature of his behavior and is probative of his intention to hide it from the Employer, thereby equating his actions to theft of company property.

As a premise manager, the Claimant is held to a higher standard of expectations than non-managerial personnel. (14:47-15:06) See, Ross v. Iowa State Penitentiary, 376 N.W.2d 642 (Iowa App. 1985). Thus, it was incumbent upon him to uphold the Employer's policies and procedures of which he had knowledge, and at the very least, not to engage a subordinate in his noncompliant activity. The Employer's policy regarding company property is in place not only for the protection of the Employer, but its customers as well. Failure to comply with the proper protocol could jeopardize the Employer's reputation as well as those of its customers. Mr. Starbeck had a duty to safeguard the Employer's interests and his actions were contrary to that end. Based on this record, we conclude that the Employer satisfied their burden of proof.

DECISION:

The administrative law judge's decision dated October 20, 2014 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for disqualifying misconduct. Accordingly, he is denied benefits until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

A portion of the Employer's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law

judge. While the appeal and additional evidence were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

Kim D. Schmett

Ashley R. Koopmans

AMG/fnv