

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

BOBBI ROOS
Claimant

APPEAL NO: 20A-UI-03094-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

D OF S FOODS INC
Employer

OC: 03/22/20
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 9, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 7, 2020. The claimant did not respond to the hearing notice and did not participate in the hearing. Heidi Moore, Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time crew member for D of S Foods (McDonalds) from July 15, 2019 until March 12, 2020. She was discharged for theft.

On February 27, 2020, a customer called the employer and stated she left her credit card at the restaurant on February 25, 2020, and someone used the card at the Dollar General store across the street from the restaurant later that day (Employer's Exhibit One). The customer asked the employer to watch the video to determine who took her card and used it. The employer viewed the video on February 27, 2020, and observed the customer using a bright green card in the drive-through at 4:48 p.m. February 25, 2020 (Employer's Exhibit One). The card was visible on top of the automated beverage machine (ABS) and the claimant rearranged items on top of the ABS (Employer's Exhibit One). She picked up the card and looked at it, put it back down, and put a circle cap which covers the cups in the dispenser on top of the card (Employer's Exhibit One). The claimant then walked away and returned to the ABS a few minutes later, wiped the ABS down, put a napkin on top of the card, and slid it off the machine (Employer's Exhibit One). She then walked to the outer range of the camera and threw the napkin away with her back to the camera (Employer's Exhibit One). The claimant heard the

employer was investigating the incident and confronted the general manager. She denied seeing the green credit card on top of the ABS. The claimant texted the general manager at 4:42 p.m. and stated a similar incident occurred at a previous employer and she did not do what she was accused of but on camera it looked like she did and she was discharged from that employer (Employer's Exhibit Three). After watching the video, the employer suspended the claimant on February 27, 2020, at 5:25 p.m. The employer notified the customer it did not have possession of the card but would make the video available to the police. The customer filed a police report. The employer waited two weeks for the police to investigate and in the meantime the customer decided against pressing charges. The employer attempted to call the claimant to notify her of her termination but when it could not reach her it sent a letter informing her that her unpaid suspension ended March 12, 2020, and she was discharged at that time for violating the employer's policy regarding theft (Employer's Exhibit Four).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

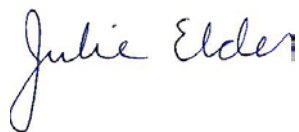
The video evidence shows the claimant finding the customer's bright green credit card on top of the ABS machine, covering it with a napkin, sliding it off the machine with the napkin on top of it, walking away with the card, and throwing away the napkin. The video does not show anyone else with the card and the claimant did not turn it in to the employer. The card was used at the Dollar General store across the street later that day.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The April 9, 2020, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Julie Elder
Administrative Law Judge

May 11, 2020
Decision Dated and Mailed

je/scn