

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICKIE J NIELSEN**  
Claimant

**APPEAL NO. 10A-UI-01275-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CIGARETTE OUTLET INC**  
Employer

**OC: 12/20/09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated January 15, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 7, 2010, in Davenport, Iowa. Employer participated by Debra Schnyder, supervisor; and Rhonda Kimmer, manager. Claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Debra Schnyder; the testimony of Rhonda Kimmer; and Employer's Exhibits 1-6.

The issue that was listed on the hearing notice was whether the claimant was able and available for work. The actual issue in this case was whether the claimant was discharged for misconduct. The representative's decision disqualified the claimant from receiving benefits on the basis of misconduct. There was likely just a scrivener's error on the notice. This was thoroughly explained to the employer and the employer agreed to waive notice and proceed on the separation issue.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer operates 15 tobacco and liquor stores. The claimant worked as a part-time clerk at the store in Clinton, Iowa. She was hired on February 27, 2009. She was terminated on December 29, 2009.

The incident that led to the claimant's termination occurred on December 22, 2009. On the morning of December 22, 2009, the owner had gone to the store to inform the employees, including the claimant, that no relatives of an employee who was working were allowed to be in the store. No purchases could be made by any relative of any employee working in the store. The policy was implemented due to problems that had developed at the store with family

members being in the store for extended periods of time. The owner informed the employees that if this rule was violated, termination would result.

The claimant was working the afternoon of December 22, 2009. She permitted her son to come in with dogs and there were other relatives and children present. Children were sitting on displays of beer. The employer found out about it after a couple of customers complained about the party atmosphere in the store. Ronda Kimmer, the manager, pulled the videotape and found that the claimant had permitted relatives in the store in violation of the policy announced that morning by the owner. The claimant was terminated on December 29, 2009.

## **REASONING AND CONCLUSIONS OF LAW:**

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.

Misconduct that disqualifies an individual from receiving unemployment insurance occurs when there are deliberate acts or omissions that constitute a material breach of the workers duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden on proof to show misconduct.

The evidence in this case is uncontroverted that the claimant deliberately violated a rule that the owner had conveyed to her in person on December 22, 2009. The owner had specifically stated that no relatives of employees were to be allowed in the store while the employee was working.

Termination was the consequence for violating that rule. That same afternoon, the claimant permitted relatives in the store and what the employer deemed a “party atmosphere” was present. The claimant did not participate in the hearing and her version of events is unknown. Since misconduct has been shown, benefits are denied.

**DECISION:**

The decision of the representative dated January 15, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant’s weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs