

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KORY J GILBERT
Claimant

APPEAL NO. 06A-UI-11217-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

**OC: 10-22-06 R: 03
Claimant: Respondent (2)**

Iowa Code section 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 16, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 6, 2006. The claimant did not participate. The employer did participate through Kim Garland, Human Resources representative, Cleve Branan, Assistant Grocery Manager and Robert Bills, Meat Manager. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a grocery clerk part time beginning September 27, 2005 through October 14, 2006 when he was discharged. The claimant was working on the cash register checking out a customer on October 13 when he failed to ring up a \$60.00 box of pork loins. The box was approximately 3 feet long by 2 feet wide by 1 foot deep. The customer pointed out to the claimant that he had failed to ring up the meat, but the claimant told him not to worry about. The customer ran the local bowling alley. The customer called the meat manager and explained to him what happened and that he did not want free merchandise. After having the discussion with the meat manager, the customer noticed that the claimant had come into the bowling alley. The claimant asked the customer not to say anything about the pork loins to any of the employer's managers not realizing that the customer had already reported the situation. The customer told the claimant he was very unhappy at the position the claimant had placed him in and that he wanted to pay for the product. The customer gave the claimant the money to pay for the pork loins and the claimant later brought him back his receipt showing that the meat had been paid for. When the claimant returned to work the next day he was discharged for allowing product out of the store without requiring the customer pay for it.

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:

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 claimant did not charge a customer for product the customer wanted to purchase even after the customer pointed out to him his error. Failing to charge customers for product, and then asking the customer to not report the situation to the employer is misconduct sufficient to disqualify the claimant from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The November 16, 2006, reference 01 decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs