

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK LOPEZ
Claimant

APPEAL NO. 08A-UI-04195-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HOLLYWOOD ENTERTAINMENT
HOLLYWOOD VIDEO**
Employer

**OC: 03-23-08 R: 03
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 28, 2008, reference 05, decision that allowed benefits. After due notice was issued, a hearing was held on May 20, 2008. The claimant did participate. The employer did participate through Mark Johnson, Regional Loss Prevention 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 shift leader, part-time, beginning in November 2007 through March 13, 2008, when he was discharged.

In a written statement, the claimant admitted to giving free video rentals to his friends, taking late fees off of his own account, and to taking concessions from the store without paying for them. The claimant's statement at the time of the investigation indicated that he admitted stealing from his employer and that his statement was voluntarily given. The claimant signed a promissory note and paid back the employer \$85.06 dollars that he admitted taking. At hearing, he denied that he had voluntarily written the statement, but had been forced to do so by Mr. Johnson. Mr. Johnson did not force the claimant to write the statement. The claimant was given a company handbook that told him it was against company policy to give free rentals to his friends. The claimant knew that he was not to take concessions from the store without paying for them.

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 § 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.

The administrative law judge is persuaded that the claimant voluntarily wrote his statement and admitted his guilt but is now denying the theft in an attempt to qualify for unemployment insurance benefits. The administrative law judge is not persuaded that Mr. Johnson coerced the claimant into writing the statement by threatening to arrest him. The claimant knew from the company handbook that giving free video rentals to his friends was prohibited. The claimant's theft from the employer is misconduct sufficient to disqualify him from receipt of unemployment insurance benefits.

DECISION:

The April 28, 2008, reference 05, 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/kjw