

failure to properly inventory the food service operation he was charged with running. On August 31 the claimant's Supervisor ran an inventory immediately after the claimant turned in his to see how complete his was. The Supervisor's inventory revealed that the claimant had miscounted some items, failed to count other items and left other expired food items in the cooler that should have been thrown away. The claimant admits that he missed some items while he conducted his inventory.

The claimant had been previously disciplined for similar behavior. On August 16, 2005, he was suspended for five days for failure to follow proper inventory procedures and for serving expired items. Prior to that time, the claimant had been counseled on April 19 about inventory problems. On February 25 the claimant was suspended for one day for selling an out-of-date item. Even if one of the other sales people made the sale, the claimant was responsible for pulling expired items from the cooler or shelves so that they could not be sold.

#### 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 had been put on notice that inventory control was important to the employer and that he was responsible for making sure that the health regulations and inventory control procedures were followed. The claimant had been previously suspended on two occasions for his failure to properly inventory and control product. The claimant had previously demonstrated the ability to properly follow inventory and food control procedures. The claimant's actions constitute misconduct.

The administrative law judge finds no evidence that the claimant was being picked on by his Supervisor. The claimant failed to follow inventory and food control regulations that were well-known to him. Benefits are denied.

DECISION:

The September 20, 2005, reference 01, decision is affirmed. 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.

tkh/kjw