

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ANNA L SHARKEY
922 SUMMERSET ST
GRINNELL IA 50112**

**GOODWILL INDUSTRIES
OF CENTRAL IOWA INC
4900 NE 22ND ST
DES MOINES IA 50313**

**Appeal Number: 05A-UI-08437-RT
OC: 07-10-05 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Anna L. Sharkey, filed a timely appeal from an unemployment insurance decision dated August 1, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on August 31, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Larry Hollingworth, Human Resources Director, and Lynda Crowell, Store Manager at the employer's store in Grinnell, Iowa, where the claimant was employed, participated in the hearing for the employer, Goodwill Industries of Central Iowa, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibits 1 and 2 were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits 1 and 2, the administrative law judge finds: The claimant was employed by the employer as a full-time store clerk, from June 7, 2004, until she was discharged on July 7, 2005. The claimant was discharged for removing items from the employer's store in Grinnell, Iowa, where the claimant was employed, without permission. On or about June 22, 2005, when arriving at work, the employer's witness, Lynda Crowell, Store Manager of the employer's store in Grinnell, Iowa, observed the claimant taking three large plastic bags out of the store and putting them in the back seat of her vehicle. Someone else was driving the vehicle. The claimant got in the passenger side of the vehicle and they drove off. Ms. Crowell went into the store and asked the clerk if the claimant had made any purchases and the clerk said no. After repeated telephone calls to the claimant, Ms. Crowell finally reached the claimant at home and asked her to return the items. The claimant stated that she had taken only a bag of boxes of pudding and a bag of plastic bags. The claimant did not say why she had taken the bag of plastic bags, but indicated that she had taken the pudding to take to the food bank. Ms. Crowell asked the claimant to return the items and she did so the next day. She had not taken the pudding boxes to any food bank. When the claimant returned the items, she returned them in small bags, not the same in size or appearance as the bags that Ms. Crowell has personally observed the claimant removing from the store. When the claimant returned the items she was suspended without pay and then discharged on July 7, 2005, as shown at Employer's Exhibit 1. The employer has security procedures and rules indicating, among other things, that no items purchased or supplied by the employer should ever be removed from the employer's premises without express authorization of the employee's immediate supervisor. The claimant received a copy of this policy, as shown at Employer's Exhibit 2. Ms. Crowell gave no permission to the claimant to remove these items.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 employer's witnesses credibly testified, and the administrative law judge concludes, that the claimant was discharged on July 7, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The administrative law judge concludes, on the record here, that the claimant actually took more items than she admitted to taking and did so without permission and without justification or payment. The administrative law judge concludes that the claimant's taking of these items was a deliberate act or omission constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evinces a willful or wanton and disregard of the employer's interests and is disqualifying misconduct. Even assuming that the claimant was totally innocent in taking the items because she wanted to take them to a food bank, an assumption the administrative law judge most certainly does not make, the claimant removed items belonging to the employer without express authorization of her immediate supervisor, in violation of the employer's security procedure, as shown in Employer's Exhibit 2, and this would still be disqualifying misconduct. The administrative law judge does not believe that the claimant took only the boxes of pudding and the bag of plastic bags because Ms. Crowell testified credibly that she observed the claimant take three large bags out of the store and put them in the back seat of the vehicle, but the claimant only returned two small bags, one containing the boxes of pudding and one containing the plastic bags.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of August 1, 2005, reference 01, is affirmed. The claimant, Anna L. Sharkey, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct.

dj/pjs