

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KALEESHA WASHINGTON
Claimant

APPEAL 21A-UI-12857-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIG LOTS STORES INC
Employer

**OC: 04/11/21
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 19, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion that she was discharged for violation of a known rule. The parties were properly notified of the hearing. A telephone hearing was held on August 2, 2021. The claimant participated. The employer did not participate. The administrative law judge took official notice of the agency records. Exhibits A, B and C were received into the record.

ISSUE:

Whether the claimant was discharged due to misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full time as a service lead from October 16, 2019, until this employment ended on April 6, 2021, when she was discharged. The claimant's immediate supervisor was Store Manager Scott Quick.

The employer has an employee handbook which describes its various policies. One policy restricts staff from using their employee discount to items purchased either by them personally or their dependent relatives. The claimant did not receive a copy of an employee handbook, but she was aware of this policy. Assistant Store Manager Wendy (last name unknown) assured the claimant that she was allowed to use the discount for her relatives.

At the end of February 2021, the claimant filed an internal discrimination complaint with corporate alleging Mr. Quick engaged in sex, disability and race discrimination.

On April 6, 2021, Mr. Quick informed the claimant that she would be terminated because she used her employee discount for an unauthorized person in February 2021.

The claimant did not receive warnings for similar misconduct over the course of her term of employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

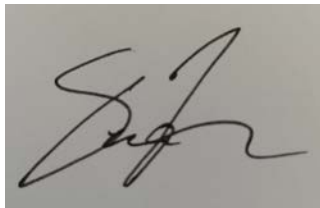
Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The claimant was discharged for an incident occurring in February 2021. As a result, the conduct at issue does not fulfill the current act requirement of Iowa Admin. Code r. 871-24.32(8). As a result, the employer has failed to show the claimant was discharged due to disqualifying misconduct. Benefits are granted.

DECISION:

The May 19, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Sean M. Nelson
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August 6, 2021
Decision Dated and Mailed

smn/scn