

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

GARY E GOODSON  
606 SUMNER ST  
WATERLOO IA 50703

FLYING J INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-01448-HT  
OC: 12/26/04 R: 03  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Gary Goodson, filed an appeal from a decision dated February 1, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 23, 2005. The claimant participated on his own behalf. The employer, Flying J, participated by General Manager Gary Crosser and Cashier Tamara Neesen.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Gary Goodson was employed by Flying J from March

2001 until January 3, 2005. He was a full-time cook and cashier. At the time of hire, he received a copy of the employee handbook and signed a receipt in which he acknowledged he was responsible for the policies and violation of any rules could lead to disciplinary action up to and including discharge. One policy is that employees may receive a discount on any food they purchase, but this does not apply to family members.

On December 23, 2004, an employee, Matthew Green, approached Cashier Tamara Neesen and asked about a discount for his entire party. Ms. Neesen was a new employee so she gave the receipt to Mr. Goodson and asked if the discount should be applied to the entire ticket. He looked at it and said that the discount for the entire ticket would only be \$12.00 and "it is the least we can do."

The next day the accountant was reviewing the sales records and discovered the discount had been given on the entire bill of Mr. Green. She referred the matter to the assistant manager who notified General Manager Gary Crosser. The claimant was not scheduled to work again until December 28, 2004, on which date the general manager and assistant manager met with him. At first he said he "had not been paying attention" to Ms. Neesen or the ticket. He was suspended pending further investigation. He was interviewed a second time on January 3, 2005, at which time he said he had not been wearing his glasses when he looked at the ticket. Mr. Crosser discharged him at that time.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 was aware of the policy regarding discounts to employees and the limitation of that discount. He chose to ignore it and advise the cashier to give a discount to Mr. Green's entire bill, rather than just his portion of it. At the hearing the claimant denied Ms. Neesen had ever asked him about the bill but this is inconsistent with the statements he gave to the employer at the time of the investigation.

DECISION:

The representative's decision of February 1, 2005, reference 01, is affirmed. Gary Goodson is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/sc