

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

JOLENE B DEJOODE  
106 SW LINDEN ST APT 2J2  
ANKENY IA 50021

GOODWILL INDUSTRIES OF CENTRAL  
IOWA INC  
4900 NE 22<sup>ND</sup> ST  
DES MOINES IA 50313

Appeal Number: 04A-UI-06368-HT  
OC: 05/16/04 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, 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, Jolene DeJoode, filed an appeal from a decision dated June 3, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 6, 2004. The claimant participated on her own behalf. The employer, Goodwill, participated by Human Resources Director Larry Hollingworth and Retail Store Manager David Mullin.

## 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: Jolene DeJoode was employed by Goodwill from August 29, 2003 until May 19, 2004. She was a full-time store clerk.

Store Manager David Mullin had been advised by other clerks that the claimant was believed to be charging some customers substantially less for the items purchased than the actual established price for those items. This usually occurred after Mr. Mullin had left the store for the day around 5:00 p.m. On May 11, 2004, Mr. Mullin had left the store but then returned shortly, at which time he saw customers removing two large bags of merchandise from the store. Another employee said she did not believe full price had been charged because the receipt was very short.

Mr. Mullin approached the customers outside the store, saying he was surveying customers to find out if the store clerks were courteous and provided receipts. The customers said they did not have a receipt but thought they had paid around \$35.00 for the items. The manager then had them come into the store and to leave the items. A review of the cash register journal tape showed they had only been charged \$2.99.

Ms. DeJoode was interviewed and maintained she had not seen all the items the customers had, and only charged them for what they put on the counter. However, the shopping carts can be seen by the cashier, and all of the items were in Goodwill sacks. She was sent to do work in the back room and the merchandise was locked up until the next day. The items were then checked by the manager and assistant manager and their value was established at \$51.96. The claimant was suspended pending further investigation.

The matter was referred to Human Resources Director Larry Hollingworth who had the witnesses write statements, which he then reviewed. Charges of theft were filed against the claimant in Polk County District Court but the matter has not yet been determined. After a review of the statements and evidence, Mr. Hollingworth instructed Mr. Mullin to discharge the claimant, which he did on May 19, 2004.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she 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 evidence is sufficient to establish the claimant knowingly charged customers a fraction of the amount the merchandise was actually worth. The administrative law judge does not find her contention that the customers shoplifted these items to be credible. The items were in Goodwill sacks and had been in a cart, which was visible to her at the checkout counter. There does not appear to have been any way the customers would have concealed so many items from the claimant under these circumstances. The claimant is guilty of conduct not in the best interests of the employer and she is disqualified.

DECISION:

The representative's decision of June 3, 2004, reference 01, is affirmed. Jolene DeJoode is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjf