

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

HELEN DOUGLASS
Claimant

APPEAL NO: 12A-UI-04210-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOODWILL INDUSTRIES OF NE IA INC
Employer

**OC: 10-16-11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 4, 2012, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 17, 2012. The claimant participated in the hearing. Sharon Samec, Vice-President of Human Resources; Nancy Dieter, Store Manager; and Jeff Scher, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time sales associate for Goodwill Industries of NE Iowa from March 28, 2011 to October 13, 2011. The claimant was scheduled to work from 2:00 p.m. to close October 13, 2011. When the claimant arrived, Store Manager Nancy Dieter observed that by the way she acted and spoke "something wasn't right." The claimant was having difficulty following simple directions and as Ms. Dieter moved closer to her she smelled the odor of alcohol. She asked the claimant to go to the office with her where she asked the claimant if she had been drinking and the claimant stated she had and she was drunk. Ms. Dieter called Human Resources and was directed to drive the claimant to the local clinic. On the way there the claimant's mood fluctuated dramatically as she laughed and cried, yelled and was calm. At one point she told Ms. Dieter not to worry because she would not hurt her. Once they arrived at the clinic the claimant announced several times she was drunk. The nurse first started to administer a drug screen to the claimant but then stated she smelled alcohol and a breathalyzer test was given. The claimant tested at .239. The clinic is required to wait 15 minutes and conduct another test but the claimant refused to comply with the second test. Ms. Dieter called a taxi to pick the claimant up and take her home. After Ms. Dieter notified the employer of the test results and the claimant's refusal to finish the test the employer terminated the claimant's employment.

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.

Due to the claimant's behavior, inability to follow simple instructions, odor of alcohol and her declaration that she was drunk, the employer had reasonable suspicion to require the claimant to submit to alcohol testing. The claimant then tested at .239 on the first part of the breathalyzer test but four minutes into the following 15-minute waiting period the claimant refused to finish the test and insisted she wanted to go home. The claimant's decision to refuse to complete the test is treated the same as a positive test. The claimant's positive test and refusal to take the second part of the test demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The April 4, 2012, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs