

On September 29, 2005, the claimant was caught in a “sting” operation by the local police department. She sold alcohol to a minor and received a citation as a result. The employer also had to pay a fine of \$1,500.00. The claimant knew she was to require identification of anyone purchasing tobacco or alcohol and that the employer has a “zero tolerance” policy where even one incident would lead to discharge. The store could lose its liquor license for 30 days if there were any further incidents of selling alcohol to a minor.

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 claimant was aware of the employer's zero tolerance policy and that any employee would be discharged for failing to require identification from anyone purchasing alcohol. In order to be disqualified from unemployment benefits for a single incidence of misconduct, the misconduct must be a deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees. Henry v. IDJS, 391 N.W.2d 731 (Iowa App. 1986). The

administrative law judge considers that this isolated incident of failing to request identification of the person purchasing alcohol does rise to the level of substantial, job-related misconduct under the above definition. Ms. Ray was fully aware of the employer's policies, the substantial legal consequences to both herself and the employer should she fail to get the identification, and that she could be fired for any failure to do so. In spite of this knowledge, she failed to ID the purchaser as required and was cited, along with the store, for violation of the liquor laws. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of October 17, 2005, reference 01, is affirmed. Geraldine Ray is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjw