

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CINDY BALDWIN
Claimant

APPEAL NO: 20A-UI-05868-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STUFF ETC INC
Employer

OC: 07/28/19
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 1, 2020, reference 07, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 10, 2020. The claimant participated in the hearing with Licensed Social Worker/Therapist Sam Thompson and Attorney Greg Greiner. Julie Arnold, Human Resources Director, participated in the hearing on behalf of the employer.

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 Stuff Etc. from August 16, 2011 to January 3, 2020. She was discharged for taking her held items out of the store in a basket for which she neglected to pay.

On December 29, 2019, the claimant had held items she was purchasing. There were no totes so she grabbed a basket off the top of the pile and put her items in the basket and paid for the merchandise but did not pay for the basket. The claimant routinely used totes to carry her items and returned them when she brought in new merchandise. The employer watched the surveillance video and observed the claimant did not pay for the basket. It has a zero tolerance for theft policy and consequently terminated the claimant's employment when she reported for work January 3, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant failed to pay for the basket she used to carry her merchandise from the store, the evidence does not establish that she intentionally stole the basket. She usually relied on totes provided by the employer to carry her items and used the basket when there were no totes available. She returned the basket with other merchandise she brought into the store for consignment. This was an isolated incident of ordinary negligence rather than intentional job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 1, 2020, reference 07, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

July 21, 2020
Decision Dated and Mailed

je/sam