

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER A MAYNARD
Claimant

APPEAL NO. 10A-UI-17147-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRUEGER ENTERPRISES INC
KRUEGER'S BP
Employer

OC: 11/07/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Jennifer Maynard filed an appeal from a decision dated December 7, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a telephone hearing was held in Des Moines, Iowa on February 23, 2011. The claimant was paged in the main waiting area at 12:59 p.m. and 1:13 p.m. She was not present and did not participate. Krueger Enterprises participated by Vice President Scott Krueger.

ISSUE:

The issue is whether the claimant was discharged for substantial job-related misconduct.

FINDINGS OF FACT:

Jennifer Maynard was employed by Krueger Enterprises from November 5, 2005 until November 6, 2010 as a full-time cashier. She received the employer's policies and procedures during the course of her employment. The policies prohibited employees from purchasing lottery tickets at any store owned by Krueger Enterprises or playing any lottery or scratch tickets while on duty. In addition cell phones were not to be used while on duty, and no one was to use the company internet for personal use.

Ms. Maynard received a written warning in September of 2009 for cell phone usage, failing to wear a proper uniform, using the computer for non-business purposes, having friends behind the cash register and playing lottery tickets on duty. She received subsequent verbal warnings from Vice President Scott Krueger about the same issues and was advised her job was in jeopardy.

The employer had long suspected the claimant was taking lottery tickets from the store without paying for them. This is only conjecture as there was no substantial proof. The employer then installed video surveillance cameras and on November 6, 2010 saw the claimant taking scratch tickets. She did not pay for them and did scratch the tickets while on duty. She was also using the company internet for accessing her Facebook while on duty.

Mr. Krueger monitored the video surveillance on a routine basis November 6, 2010 and saw the claimant doing all of these things. He called her up and told her she was discharged.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant had been advised her job was in jeopardy as a result of her violation of company policies. Instead of remedying her conduct she continued to take lottery tickets without paying for them and used the company internet for personal use. These are violations of known company policies and conduct not in the best interests of the employer. The taking of the lottery tickets is theft and the use of the company computer for personal use prevented the computer from being used for legitimate business purposes. This is a violation of the duties and responsibilities the claimant owes to the employer and she is disqualified.

DECISION:

The representative's decision of December 7, 2010, reference 01, is affirmed. Jennifer Maynard is disqualified and benefits are withheld until she was requalified by earning ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css