

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILL A DELING
Claimant

APPEAL NO. 11A-UI-03579-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

**OC: 10/24/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated March 18, 2011, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on April 12, 2011. Claimant participated personally. The employer participated by Mr. Garrett Pilkapp, Corporate Counsel, and witness, Mr. Don Goldsmith, Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Jill Deling was employed by Fareway Stores from November 4, 2010 until January 7, 2011 when she was discharged from employment. Ms. Deling worked as a part-time meat department clerk and was paid by the hour. Her immediate supervisor was Don Goldsmith.

Ms. Deling was discharged when the employer believed that the claimant did not possess sufficient skills to perform the duties incident to her job at a level of competency expected by the employer. Although Ms. Deling had previous experience with another employer in that company's meat department, the claimant was unfamiliar with the employer's expectations during her employment with Fareway Stores. Ms. Deling had not been given in depth training and company employees at time were unresponsive to the claimant's inquiries about how to better do her job. Ms. Deling had been given verbal reminders however claimant did not categorize the reminders as warnings and was not aware that her employment was in jeopardy. At the time of discharge the claimant was provided copies of warnings that the employer had intended to serve upon her previously.

The employer was dissatisfied based upon the claimant's level of productivity and her competency. The employer also had received complaints about the manner in which Ms. Deling

had performed her duties. On one occasion the claimant cut the wrong piece of meat based upon the advice of another meat department employee and in a different instance a customer had complained as the claimant had not adequately wrapped a meat product that had been sold.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes sufficient intentional misconduct on the part of the claimant to result in the denial of unemployment insurance benefits. It does not.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify the denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992). Based upon carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in

the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits relating to that separation. Inasmuch as the evidence establishes that the claimant had little training, little job direction and insufficient warnings prior to discharge, the employer has not met the burden of proof to establish the claimant engaged in disqualifying misconduct. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 18, 2011, reference 02, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs