

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE R BARNARD
Claimant

APPEAL NO. 11A-UI-15254-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOODWILL INDUSTRIES OF THE
HEARTLAND**
Employer

**OC: 10/16/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the November 14, 2011 (reference 02) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 22, 2011. Claimant participated. Employer participated through assistant store manager LaVonne Johnston and store manager Tara Newbury and was represented by Toni Markiewicz of Xchanging/Cambridge.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production clerk and was separated from employment on October 10, 2011. On October 6 employer accused claimant of ringing up a customer for three items (two pairs of shoes and a purse) but did not ring up two pairs of shoes priced at \$50. He does not recall the alleged incident and the employer did not show him the surveillance video or provide a copy as proposed evidence for the hearing. He had no prior warnings.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984).

In an at-will employment environment 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, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer has not met the burden of proof to establish that claimant engaged in any misconduct or acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The November 14, 2011 (reference 02) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs