

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA J WILLE
Claimant

APPEAL NO. 13A-UI-09125-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOBBY LOBBY STORES INC
Employer

**OC: 07/14/13
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated August 1, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on September 11, 2013, by telephone conference call. The claimant participated personally. The employer participated by Annalee Miller, Human Resources Specialist; Levi Ellis, Senior Regional Investigator; and Joann Mallinger, Assistant Manager, store 179 Fort Dodge, Iowa. The record consists of the testimony of Annalee Miller; the testimony of Levi Ellis; the testimony of Joann Mallinger; the testimony of Amanda Wille; and Employer's Exhibits-1-8.

ISSUE:

Whether the claimant was discharged for a current act of misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is an arts and crafts store located in Fort Dodge, Iowa. The claimant was hired on June 23, 2008, as a full-time cashier. Her last day of work was July 11, 2013. She was terminated on July 11, 2013.

The claimant was terminated because she admitted that she stole a candy bar. This theft was discovered in an interview with the claimant on May 8, 2013. The claimant does not remember when she took the candy bar. The claimant was allowed to work from May 8, 2013, to July 11, 2013.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988) The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The reason is that the claimant was not discharged for a current act of misconduct. Over two months went by between the time the claimant admitted to stealing the candy bar and when she was terminated. The employer tried to justify the delay by saying that there time was needed to investigate the theft. It does not take two months to investigate the theft of a candy bar, particularly when the claimant admits that she took the candy bar. Since the claimant was not discharged for a current act of misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 1, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css