

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELODEE L OWENS**

Claimant

**APPEAL NO. 07A-UI-02383-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BETHANY ENTERPRISES INC**

Employer

**OC: 02/04/07 R: 12  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated March 2, 2007, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on March 16, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Bill Ernst participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a cashier for the employer from December 11 to December 26, 2006. Bill Ernst is the owner of the business.

On December 24, 2006, the assistant manager of the convenience store left the store with two 18-packs of beer, which she had taken without paying for. The claimant asked the assistant manager about the beer, and the assistant manager asserted that Ernst had given her the beer as a Christmas bonus, which was untrue.

Later that evening, the claimant spoke to Ernst and asked if she would be getting two 18-packs of beer as a Christmas bonus. When Ernst told her no and asked her where she gotten that idea, the claimant informed Ernst about the conversation she had with the assistant manager. Ernst told the claimant that he would be handling the matter personally and that she was not talk to anyone about the matter.

The claimant followed Ernst's instructions and did not talk to anyone about her conversation with Ernst or the fact that the assistant manager had taken beer from the store. The next day the assistant manager turned in her keys and her written resignation. The written resignation was written to the store manager. The resignation stated that she remembered "now" that she had told the claimant that she had been given the 18 packs of beer as a Christmas bonus, but she was just joking.

When Ernst heard about the assistant manager's resignation, he believed the claimant had spoken to her or someone else about the situation in violation of his instructions. He discharged the claimant on December 26, 2006, for that reason.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant denied speaking with the assistant manager or anyone else regarding the beer situation. Her testimony was credible. The language of the resignation corroborates the claimant's testimony. No willful and substantial misconduct has been proven in this case.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for its proportional share of benefits paid to the claimant based on this separation from employment.

**DECISION:**

The unemployment insurance decision dated March 2, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw