

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLI LAMPMAN
Claimant

APPEAL NO: 09A-UI-08540-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRENCH WAY CLEANERS/FURRIERS
Employer

OC: 05-03-09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 5, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 30, 2009. The claimant participated in the hearing. Casey Reyes, Store Manager and Mike McBroom, Owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time branch store clerk/customer service representative for French Way Cleaners/Furriers from February 23, 2007 to May 5, 2009. In mid-March 2009 Store Manager Casey Reyes found clothes that came over from the Ingersoll store where the claimant worked. The clothes had strip tags on them but Ms. Reyes could not find an invoice to match them to and determine who they belonged to. The employer keeps a notebook of every item checked in to be cleaned but those strip tag numbers had been skipped in the notebook. Ms. Reyes asked two other employees if the clothes were theirs and they said no but indicated they might belong to the claimant. Ms. Reyes took the clothes back to the main store. On March 31, 2009, Ms. Reyes called clerk Tracy Bright and asked her to make an invoice for the clothes. At that time the claimant had been off work for approximately one week due to illness. The invoice was sent to Ms. Reyes and she hung it with the clothes and forgot about it until Owner Mike McBroom and another manager asked her about the clothes and she said she thought they were the claimant's. On May 5, 2009, Mr. McBroom and Ms. Reyes went to the Ingersoll store to meet with all employees and Mr. McBroom asked everyone if the clothes were theirs and they all said no. The claimant arrived late for the meeting and when they asked her if the clothes were hers she said yes. Mr. McBroom asked her if she intended to pay for the clothes and when she said no Mr. McBroom told her that her employment was terminated and she could leave. The claimant testified she completed an invoice but lost it and told Ms. Reyes

she would pay for the clothes in July 2009 because due to her two week illness she was behind in her rent. Ms. Reyes does not recall that conversation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 told Owner Mike McBroom she did not intend to pay for the clothes she brought in to be cleaned in March 2009 when he asked her about it May 5, 2009. While the claimant may have meant she could not pay for the clothes that day she answered with a flat "no" when asked if she was going to pay for the clothes and it was not unreasonable for the employer to believe she did not intend to pay for them at all and terminate her employment for taking services without paying for them. The claimant did not correct this misperception but simply gathered her belongings and left when told her employment was over. The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore benefits must be denied.

DECISION:

The June 5, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css