

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL L RUBALCADA
Claimant

APPEAL NO. 11A-UI-13721-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOODWILL INDUSTRIES OF THE
HEARTLAND**
Employer

**OC: 09/18/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated October 11, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on November 17, 2011. Claimant participated personally. Participating as witnesses for the claimant were Ms. Brenna Embree, Former Employer, and Ms. Melonie Rubalcada, Claimant's Sister. The employer participated by Ms. Heather Cichon, Hearing Representative, and witnesses: Ms. Kelley Daul-Howser, Director of Human Resources and Ms. Courtney Glasgow, Store 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: Daniel Rubalcada was employed by Goodwill Industries of the Heartland from July 19, 2009 until September 22, 2011 when he was discharged from employment. The claimant worked as a full-time production clerk and was paid by the hour. His immediate supervisor was the store manager, Courtney Glasgow.

Mr. Rubalcada was discharged on September 22, 2011 for an incident that had taken place on Sunday, September 18, 2011. On that day Mr. Rubalcada had called another employee who was working at the store, Brenna Embree, to witness the claimant checking out merchandise being purchased by his sister, Melonie Rubalcada. The claimant was aware of the company rule that required employees who are checking out family members to have the transaction witnessed by the manager on duty or by another store employee who held the job title of "checker." Ms. Embree witnessed the transaction as requested.

The store manager, Ms. Glasgow observed the final portions of the check-out procedure between Mr. Rubalcada and his sister but did not see Ms. Embree, or recognize Ms. Embree as

being there to observe the transaction. Subsequently, the store manager attempted to reconstruct the transaction by attempting to determine which of the numerous sales that day had been the sales transaction between the claimant and his sister. It was the store manager's belief that the transaction in question had an approximate value of \$5.00, however, only \$1.76 had been charged. After conferring with upper management including the vice-president and president of Goodwill, a decision was made to terminate Mr. Rubalcada when he reported for work on September 22, 2011. Although Mr. Rubalcada protested his discharge specifically indicating that Ms. Embree had observed the transaction, the employer did not verify with Ms. Embree whether she had been acting as an observer of the transaction.

It is the employer's position that only managers on duty or "second cashiers" who are at that time performing cashier duties can be used to observe an individual checking out a family member.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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 this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct

that may be serious enough to warrant the discharge of an employee may not necessarily be 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).

In this matter a decision was made to terminate the claimant based upon the store manager's perception that another checker was not observing the transaction when Mr. Rubalcada checked out purchases for his sister. Although the claimant protested at the time of discharge that he did, in fact, have a store worker who had the classification as a cashier observe the transaction, the employer did not verify the claimant's allegations.

The evidence in the record establishes that Mr. Rubalcada did have Ms. Brenna Embree, a cashier who was performing other duties at the time, observe the transaction in question. The administrative law judge finds the claimant to be reasonable in his belief that Ms. Embree was authorized to observe the transaction based upon the verbal information about the policy that had been given to company employees.

It was the employer's further belief that Mr. Rubalcada had not charged the proper amount during the transaction. The store manager had attempted to piece together the transaction based upon subsequent transactions that she was aware of. The evidence in the record is not sufficient to establish that the transaction reviewed by Ms. Glasgow was, in fact, the transaction between the claimant and his sister. The evidence from the claimant and his witnesses showed a substantially different transaction and amount tendered during the transaction.

In this case the employer made a management decision to terminate Mr. Rubalcada based upon its perception the claimant had violated a company policy. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 11, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs