

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

REBECCA JETER
Claimant

**GOODWILL INDUSTRIES OF CENTRAL
IOWA**
Employer

APPEAL NO. 14A-UI-02458-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/02/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Rebecca Jeter (claimant) appealed an unemployment insurance decision dated February 24, 2014, (reference 01), which held that she was not eligible for unemployment insurance benefits because she was discharged from Goodwill Industries of Central Iowa (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 26, 2014. The claimant participated in the hearing. The employer participated through Kathy Crooks, Human Resources Director; Karen Tomlinson, Retail Director; and Angie Coleman, Retail Coordinator. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant most recently worked as a full-time store clerk and was employed from November 7, 2012, through February 5, 2014, when she was discharged for multiple violation of company policies. The employer was conducting an investigation into possible reasons store sales could be low and determined that on January 13, 2014, the claimant failed to follow store purchasing guidelines, failed to follow job instructions, deliberately restricted output and rang up items for less than their value which is considered theft. She admitted she violated the employer's work rules by holding goods and by deliberately restricting output but contends that she deserved a warning as opposed to termination. The claimant denies ringing up an item for less than its value and while it could have looked like that on the surveillance recording, the claimant explained that it was a larger kid's shirt. No previous warnings were issued.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

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 duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on February 5, 2014, for policy violations committed on January 13, 2014. 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. However, if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

Furthermore, the claimant was discharged for a past act. While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge or disciplinary suspension for misconduct cannot be based on such past act(s). The termination or disciplinary suspension of employment must be based on a current act. See 871 IAC 24.32(8). Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated February 24, 2014, (reference 01), is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css