

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOREN A GOODWIN

Claimant

APPEAL NO. 09A-UI-08383-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE SPORTS PAGE INC

Employer

OC: 05/03/09

Claimant: Appellant (1)

Section 96.5-2-A -- Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 5, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 29, 2009. Employer participated by Joe Ripperger, General Manager. Claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Joe Ripperger.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

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

The claimant was discharged on April 28, 2009, for theft of company property. The claimant worked as a cook for the Brick House, a restaurant owned by the employer. On April 27, 2009, the claimant gave a pizza to a former employee without taking any payment. The claimant had previously been given a verbal warning and a written warning for attendance violations. The claimant had started work for the employer in March 2009.

When asked by management whether he had given a free pizza away, he indicated that he had done so. The employer then terminated the claimant.

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.

The claimant was discharged for what the employer called theft of company property. The claimant did not participate in the hearing and therefore his version of events is unknown. Mr. Ripperger, the general manager, testified that he asked the claimant whether he had given away a free pizza and that the claimant had admitted to doing so. The claimant had previously been warned about attendance violations. In view of these attendance violations and the theft of company property, the claimant was terminated.

The employer has established misconduct that disqualifies the claimant from receiving unemployment insurance benefits. Employers have a reasonable expectation that employees will be honest and not give away company property. In this case, the claimant deliberately gave away a pizza without payment. This was a willful disregard of the employer's interests and as such constitutes misconduct. Benefits are denied.

DECISION:

The decision of the representative dated June 5, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid

wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css