

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY I LYNCH
Claimant

APPEAL NO. 09A-UI-03973-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOODS INC
Employer

OC: 02/08/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sherry Lynch (claimant) appealed a representative's March 3, 2009 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Foods (employer) for dishonesty in connection with her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 7, 2009. The claimant was represented by Christopher Rottler, Attorney at Law, and participated personally. The employer participated by Paul Johnson, Store Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 29, 2002, as a full-time bakery clerk. The claimant signed for receipt of the employer's handbook. The claimant started her employment at the Merle Hay store. The bakery manager allowed the claimant to purchase cookies at a discounted rate for donation to the National Guard. The claimant was transferred to the Ankeny, Iowa, store. She did not think to ask the new management for the discounted rate.

The employer issued the claimant a verbal warning early in January 2009, for talking to people in the Deli. The employer told her that she would get a written warning if she continued this practice. The claimant stopped talking to people in the Deli. On January 23, 2009, the employer issued the claimant a written warning for talking to people in the Deli. The claimant told the employer she had not done this. The employer said other people told him she had and would not rescind the warning.

On February 6, 2009, the claimant purchased six dozen cookies for a discounted rate of \$10.00 instead of the usual rate of \$25.74. The store director asked the claimant about the cookies. The claimant honestly related the facts of the situation. The store director demanded the claimant pay the full rate for the cookies and fired the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not previously warned 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 negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer has not met its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 3, 2009 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css