

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHARON THACKER**  
Claimant

**APPEAL NO: 16A-UI-07532-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CBOCS INC**  
Employer

**OC: 06/12/16**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 29, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 27, 2016. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Will Joor, General Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**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 cashier for Cracker Barrel from October 9, 2006 to June 9, 2016. She was discharged for keeping and using a guest's gift card April 19, 2016.

On April 19, 2016, a guest contacted the employer and stated the claimant did not return her gift card which contained \$18.73. The employer reported the situation to loss prevention after hearing from the guest April 19, 2016.

Loss prevention conducted an investigation by going through transactions and looking at the security cameras and observed on April 18, 2016, the claimant set the guest's gift card off to the side when the guest left it rather than cutting it up as is required by the employer's policy. She purchased a crocheted item from the employer's gift shop and some ten cent peppermint puff balls. That was the only transaction the employer observed as that act alone was enough for the employer to discharge the claimant under the employer's theft policy. On June 9, 2016, the employer notified the claimant her employment was terminated. The claimant had never received any previous warnings for anything during her ten year tenure with this employer.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of

unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

In this case, the claimant used very poor judgment in deciding to use a gift card left behind by a guest to purchase a few items for herself April 18, 2016, and did violate the employer's policy regarding theft. The employer was alerted to that situation April 19, 2016, however, but it took loss prevention nearly two months to investigate that single incident and for the employer to take disciplinary action against the claimant in the form of termination of her employment.

Under these circumstances, the administrative law judge must conclude that while the claimant did commit misconduct April 18, 2016, it was no longer a current act of misconduct by the time the employer terminated her employment June 9, 2016. Therefore, there was no final act of misconduct that precipitated the claimant's termination of employment. Consequently, benefits must be allowed.

**DECISION:**

The June 29, 2016, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs