

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LOLA CLOSE
Claimant

CATHOLIC HEALTH INITIATIVES
Employer

APPEAL 15A-UI-06676-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 2, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 8, 2015. Claimant participated. Employer participated through Business Partner in Human Resources Terri Trepp and Chef Manager Chris Rehmer.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a food service associate from October 1, 2001, and was separated from employment on May 19, 2015, when she was terminated.

On May 14, 2015, Chef Manager Chris Rehmer was looking for a knife beneath the sink in claimant's work area and discovered a bag of food items belonging to employer. Rehmer asked claimant why the food items were in her work area. Claimant stated she wanted to buy the items. At that time, Rehmer counted the items. After claimant left work that day, Rehmer checked the bag and noticed items were missing. Rehmer viewed security footage and saw claimant leave with what appeared to be food items. Claimant had not paid for any food items before leaving that day. The next morning, May 15, 2015, claimant brought a bag of food items from the employee locker area and paid for the items. Upon confrontation, claimant admitted taking two bottles of water and cantaloupe without paying for them the previous day. She also stated she had been storing a bag of food items in her locker for about one week before paying for them that day. Employer does not allow employees to keep its inventory in their lockers without first purchasing the items.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. Employer provided evidence claimant stole from the company. Claimant's conduct evinced 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.

DECISION:

The decision of the representative dated June 2, 2015, (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.

Christine A. Louis
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Decision Dated and Mailed

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