

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADNAN HALILOVIC
Claimant

APPEAL NO. 15A-UI-04217-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOTTLING GROUP LLC
Employer

**OC: 02/22/15
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated April 2, 2015 (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged from employment under disqualifying conditions. After due notice was provided, a telephone hearing was held on May 13, 2015. Claimant participated. The employer participated by Mr. Thomas Kuiper, Hearing Representative, and witness Mr. Erik Bergan, District Sales Manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Adnan Halilovic was employed by Bottling Group LLC from August 11, 2014 until February 28, 2015; when he was discharged by the employer. Mr. Halilovic was employed as a full-time store merchandiser and was paid by the hour. The claimant primarily merchandised Pepsi-Cola products. His immediate supervisor was Mr. Erik Bergan.

Mr. Halilovic was discharged from his employment with Bottling Group LLC on Saturday, February 28, 2015 because the claimant had been banned from Wal-Mart Stores that day for consuming products without paying for them.

Mr. Bergan was summoned to the Wal-Mart facility on February 28, 2015, where Mr. Halilovic was performing his duties for the company. At that time, Mr. Bergan observed Wal-Mart security cameras tapes that showed Mr. Halilovic consuming energy drinks and food products, and disposing of the empty cans or wrappers without making payment for them to Wal-Mart. The district manager was shown security tapes of Mr. Halilovic engaged in these activities, which took place on February 14, February 21, February 23, and February 28, 2015. When informed of his discharge and the contents of the security tapes, Mr. Halilovic had no response.

Employees are informed to carry receipts verifying the purchase of products that they may consume while performing services for Bottling Group LLC at client locations. An employee who is banned from a client location for their conduct, is unable to perform the duties that he was hired by the company to perform. Bottling Group LLC considers any personal conduct on the part of an employee that results in a ban from the client location to have a direct connection with the claimant's employment because the employee's conduct reflects negatively on the company and if an employee is banned from a location, he no longer can perform the duties for part of the job that the employee was hired for.

It is the claimant's position that it was his practice to consume energy drinks or food and to later pay for the items as he left the Wal-Mart facility. Mr. Halilovic agrees that at times he "forgot" to make payment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 employer has the burden of proof in this matter. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee, may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the evidence in the record establishes that the claimant on many occasions consumed drinks and food stuff that were the property of Wal-Mart stores; while he was performing his duties as a Pepsi merchandiser in the Wal-Mart locations for Bottling Group LLC. The evidence also establishes that Mr. Halilovic was observed on security cameras on Wal-Mart stores consuming products, discarding the wrappers or cans that the products were encased in without paying for the products before leaving the client location. After the claimant was observed on at least four occasions consuming drinks or food stuffs without paying for them, the claimant was banned from returning to Wal-Mart stores by the client. The claimant's conduct jeopardized the employment relationship between Bottling Group LLC and Wal-Mart stores, and showed a willful disregard of Bottling Group LLC's interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Law.

Although the administrative law judge is cognizant that Mr. Halilovic maintains that he "later paid" for items that he consumed, the administrative law judge finds the claimant's testimony to strain credibility as he was observed on security tapes discarding the wrappers and cans that the drinks and food stuffs had been encased in; in an apparent effort to hide the consumption of the products and avoid payment. The claimant also admitted in his testimony that he at times "forgot" to make payment after consuming the items at the Wal-Mart stores.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in establishing disqualifying misconduct on the part of the claimant. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible.

DECISION:

The representative's decision dated April 2, 2015 (reference 01) is affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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