

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY R WOOLERY
Claimant

APPEAL NO. 11A-UI-15267-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

**OC: 10/23/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Kimberly R. Woolery filed a timely appeal from an unemployment insurance decision dated November 16, 2011, reference 02, that disqualified her for benefits. After due notice was issued, a telephone hearing was held December 20, 2011, with Ms. Woolery participating. Teresa McLaughlin and Dan Noack participated for the employer, Fareway Stores, Inc. Exhibit A was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Kimberly R. Woolery was employed by Fareway Stores, Inc. from November 4, 2007, until she was discharged October 25, 2011. She last worked as a cashier and office manager. Ms. Woolery was off duty on October 15, 2011, when she wrote a check for \$104.69, more than the store limit of purchase price plus ten dollars. The check required a manager override to let the transaction proceed. Although Ms. Woolery was not on duty, she entered her own manager code to let the transaction proceed. Doing so violated company policy. Store Manager Dan Noack learned of this on October 25, 2011, when the check was returned by Ms. Woolery's bank for insufficient funds. Ms. Woolery had previously made an implicit promise to Mr. Noack that she would not write checks in the store because of earlier problems with insufficient funds. Someone altered the number in the check's routing code.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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.

Ms. Woolery argued that she had not violated company policy, because another person had scanned her purchase. The fact remains that she permitted the transaction to be completed by entering her manager code as required because of the high amount of cash she was to receive. Mr. Noack's testimony that this is a violation of company policy is credible. The administrative law judge concludes that the claimant was discharged for misconduct, deliberate violation of company policy. Benefits are withheld.

DECISION:

The unemployment insurance decision dated November 16, 2011, reference 02, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw