

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

TINA M WAYLAND  
1437 CITY VIEW DR  
DENISON IA 51442-2547

AL'S CORNER OIL COMPANY  
12053 HWY 71 N  
CARROLL IA 51401

Appeal Number: 06A-UI-04826-CT  
OC: 04/09/06 R: 01  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tina Wayland filed an appeal from a representative's decision dated April 27, 2006, reference 01, which denied benefits based on her separation from Al's Corner Oil Company (Al's). After due notice was issued, a hearing was held by telephone on May 22, 2006. Ms. Wayland participated personally and offered additional testimony from Ruth Hose. The employer participated by Cindy Tiefenthaler, Office Manager, and Kathy Mefferd, Store Manager.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Wayland was employed by Al's from January 24, 2005, until April 10, 2006, as a store clerk. She worked approximately 30 hours each week. She was discharged for providing cigarettes and alcohol to minors. Ms. Wayland acknowledged that she purchased cigarettes at Al's and gave them to a minor on one occasion. She was still in uniform and in the store when she purchased and gave the cigarettes to the minor.

On or about April 3, 2006, the employer received a complaint from a parent who indicated Ms. Wayland had sold her underage daughter wine coolers at half-price. On April 4, Ms. Wayland was given two written warnings. One concerned the fact that she had purchased cigarettes for a minor while in the store and the other concerned the complaint of her selling alcohol to a minor. Ms. Wayland signed both warnings but did not indicate any disagreement on them.

As a result of the complaint received on April 3, Kathy Mefferd, the store manager, decided to do her own surveillance on the store. On the evening of April 7, she observed an individual she knew to be a minor leave the store with a paper bag. Once he was at the vehicle, which contained other young individuals, he pulled the contents part of the way out of the bag. Ms. Mefferd saw that it was a 12-pack of beer he had in the bag. Ms. Wayland was the only individual on duty at the time. As a result of this final incident, she was notified of her discharge on April 10, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Wayland was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Wayland was discharged for selling cigarettes and alcohol to minors in violation of the law. She acknowledged providing cigarettes to a minor in spite of knowing it was against the law. The fact that she was off duty is irrelevant. The fact that she paid for the cigarettes is likewise irrelevant. Ms. Wayland was in uniform and still within the store when she gave the cigarettes to the minor.

Because Ms. Wayland provided cigarettes to a minor, it is believable that she would also provide alcohol to minors. In making the decision to discharge, the employer did not rely on the uncorroborated complaint from the parent to the effect that Ms. Wayland had sold alcohol to her minor daughter. Rather, the manager undertook her own surveillance of the store. The manager observed a minor leave the store with a 12-pack of beer while Ms. Wayland was the only person on duty. Ms. Wayland's conduct jeopardized the employer's license to do business. She had been warned about such conduct on April 4. In spite of the warning, she sold beer to a minor on April 7. Her conduct constituted a substantial disregard of the employer's interests and standards. For the reasons cited herein, it is concluded that misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated April 27, 2006, reference 01, is hereby affirmed. Ms. Wayland was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/kjw