

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN J TRITLE

Claimant

CIGARETTE OUTLET INC

Employer

APPEAL NO: 10A-UI-05244-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/28/10

Claimant: Appellant (1)

Discharge 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 26, 2010, reference 01, that held she was discharged for misconduct on February 12, 2010, and benefits are denied. A telephone hearing was held on May 20, 2010. The claimant participated. Michele Kelsey, Store Manager, and Debra Schnyder, Supervisor, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment on November 24, 2008, and last worked for the employer on February 12, 2010. The claimant was discharged on February 14 for theft of a newspaper on February 12.

The employer called a meeting of store employees about two weeks prior to February 12 to warn them about taking store food items without paying. Everyone was warned that theft of store property would not be tolerated, and could lead to termination.

An assistant manager reported to store manager Kelsey and supervisor Schnyder that claimant took a newspaper from the store without paying for it when leaving work on February 12. Kelsey and Schnyder watched a security video that showed the claimant taking the paper, and not paying for it. The claimant took the paper, but she claims it was a day-old paper to be discarded that was permissible for her to take without payment. The employer denies this practice, and it maintains the claimant took a to-be-sold that day paper.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on February 14, 2010, for theft.

The employer recent meeting put the claimant and other workers on notice that theft, even small items from the store, would lead to termination. Two employer supervisors viewed a security video that showed the claimant taking a newspaper from where same-day papers are placed for sale. An assistant manager witnessed the claimant taking the paper, and claimant admits she did not pay for it. The claimant offered no evidence of an employer policy that taking any paper without payment is permissible.

DECISION:

The department decision dated March 26, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on February 14, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css