

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

DAWN M COOK  
1446 SEARLE ST  
DES MOINES IA 50317

GOODWILL INDUSTRIES OF  
CENTRAL IOWA INC  
4900 NE 22<sup>ND</sup> ST  
DES MOINES IA 50313

TERESA JONES  
LEGAL ASSISTANT  
1111 – 9<sup>TH</sup> ST STE 230  
DES MOINES IA 50314

Appeal Number: 05A-UI-07999-DT  
OC: 07/10/05 R: 02  
Claimant: Respondent (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

STATEMENT OF THE CASE:

Goodwill Industries of Central Iowa, Inc. (employer) appealed a representative's August 2, 2005 decision (reference 01) that concluded Dawn M. Cook (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 19, 2005. The claimant participated in the hearing and was represented by Teresa Jones, Legal Assistant. Larry Hollingworth appeared on the employer's behalf and presented testimony from two other witnesses, Travis Sowden and Robin Hill. During the hearing, Employer's Exhibits One, Two, and Three, and Claimant's Exhibits A and E were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on November 22, 2004. She worked part-time (approximately 20 hours per week) as a clerk at the employer's Des Moines, Iowa store. Her last day of work was June 8, 2005. The employer suspended her on that day and discharged her on June 24, 2005. The reason asserted for the discharge was "shopping while on the clock."

Early on June 8 an acquaintance of the claimant informed her that she was going to come into the store later that day. While the claimant was working, she set aside some items she in which she thought the acquaintance might have interest. She put the items into a shopping cart while she was working. Another clerk found the cart and put the items in a bin in the back. When the acquaintance came into the store, the claimant assisted the acquaintance in retrieving the items.

The claimant's actions were found by the employer to be a violation of work rules regarding "failure to observe employer store purchasing guidelines and tracking of donated goods," "wasting time loitering or leaving place of work during working hours without permission from immediate supervisor," "failure to follow employer job instructions and/or assignments, verbal or written," "unsatisfactory work performance," and "deliberately restricting output." (Employer's Exhibit Three.) A first offense violation for any of these policies is a verbal warning or a written warning, or in the case of "deliberately restricting output," a five-day suspension. (Claimant's Exhibit A.) However, the employer determined to treat the violation as a third violation because the claimant had a July 9, 2004 warning for unsatisfactory work performance related to being \$1.99 short, where \$2.00 had been put under a book rather than in the register (Employer's Exhibit One), and a August 17, 2004 warning for unsatisfactory work performance for being \$5.05 short on her drawer (Employer's Exhibit Two).

The claimant's initial period of employment with the employer had begun on March 25, 2004 and ended September 24, 2004. The claimant voluntarily quit effective that date due to health reasons. When she was rehired November 22, 2004, she had to complete a new 90-day probationary period. She had a probationary review on March 11, 2005 indicating that her date of employment was November 22, 2004. (Claimant's Exhibit E.)

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the

employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the incident on June 8, 2005 with setting aside merchandise for the acquaintance. The administrative law judge finds merit in the claimant's contention that the warnings issued to her in her prior period of employment cannot be used against her in her new period of employment. Further, under the circumstances of this case, the claimant's actions on June 8 were the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's August 2, 2005 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/kjf