

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY L SPOONER
Claimant

APPEAL NO. 09A-UI-01940-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SLB OF IOWA LC
PANERA BREAD OF IOWA**
Employer

**OC: 01/04/09 R: 2
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge
Section 96.6(2) – Timeliness

STATEMENT OF THE CASE:

The claimant, Nancy Spooner, filed an appeal from a decision dated January 26, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 27, 2009. The claimant participated on her own behalf. The employer, Panera Bread, participated by Training Specialist Tiffany Schuster. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the claimant's appeal is timely and whether she was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Nancy Spooner filed a claim for unemployment benefits with an effective date of January 4, 2009. A decision disqualifying her from receiving benefits was issued on January 26, 2009, and mailed to her address of record. She did not receive the decision and did not know she had been disqualified until February 6, 2009, when she went to her local Workforce Center to inquire about the status of her claim. She filed her appeal February 9, 2009.

Ms. Spooner was employed by Panera Bread from September 13, 2007 until January 2, 2009 as a full-time customer service associate. She received written warnings regarding tardiness on February 23, December 14, 23, and 26, 2008. The final warning did notify her that her job was in jeopardy.

On August 1, 2008, a memo was issued to all employees reminding them of the company policy that prohibits them from eating any food before it is paid for. Failure to pay for the food before eating is considered theft and could be grounds for discharge. Ms. Spooner signed she had read the memo on August 2, 2008.

On January 1, 2009, General Manager Cynthia Kapela saw the claim take a pastry from the case and eat it without paying for it. She reviewed Ms. Spooner's employee file and the next day notified her she was discharged.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant did not receive the representative's decision and did not know she had been disqualified until February 6, 2009, and filed the appeal three days later. The administrative law judge considers the claimant acted promptly to file the appeal once she knew she had been disqualified and the appeal shall be accepted as timely.

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 claimant was aware her job was in jeopardy already due to her chronic tardiness. She was also aware of the company policy that forbids the consumption of any of the employer's inventory until it had been paid for. In spite of this, the claimant took and ate a pastry without paying for it on January 1, 2009.

Her stated intention to pay for it before she left the workplace at the end of her shift is irrelevant. The policy requires the food to be paid for before it is eaten, not afterward. It would not have taken any time at all to at least leave the money with the person running the cash register so the sale could be rung up. The claimant knowingly violated the employer's policy regarding this conduct even though she knew it was grounds for discharge. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of January 26, 2009, reference 01, is affirmed. Nancy Spooner is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw