

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL R WILSON
Claimant

APPEAL NO. 10A-UI-08730-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOODWILL INDUSTRIES
OF CENTRAL IOWA INC**
Employer

**Original Claim: 05/16/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Michael R. Wilson filed a timely appeal from an unemployment insurance decision dated June 17, 2010, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was started on August 5, 2010, with Mr. Wilson participating. Kathy Crooks and Deanne Hamilton participated for the employer. The hearing was concluded on August 6, 2010. Employer Exhibits One through Six were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Michael R. Wilson was employed a part-time store clerk for Goodwill Industries of Central Iowa, Inc. from October 14, 2002, until he was discharged May 20, 2010. The final incident leading to discharge occurred on May 13, 2010. It took Mr. Wilson one hour and ten minutes to count down his cash drawer.

Mr. Wilson was born with cerebral palsy and has the use of only one hand. Anxiety and frustration may interfere with his efficiency at completing his work. He had received warnings in the past for taking too long to complete the count.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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 employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements that it must prove is that the final incident leading directly to the decision to discharge was both current and an act of misconduct. See 871 IAC 24.32(8). The record establishes that the employer waited one week from the final incident to discharge Mr. Wilson. Furthermore, the employer has not established that Mr. Wilson deliberately, carelessly, or negligently took too long to count down the cash drawer on May 13. A glaring omission in this record is any testimony from Mr. Wilson's supervisor on the day of the final incident. Mr. Wilson's testimony that he was working to the best of his ability on that occasion has not been contradicted by any evidence in the record. There is no basis for disqualification.

DECISION:

The unemployment insurance decision dated June 17, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw