

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STACIA GORDON**  
Claimant

**APPEAL NO: 16A-UI-08597-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOCO INC**  
Employer

**OC: 07/03/16**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 26, 2016, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 31, 2016. The claimant participated in the hearing with witnesses Janet Jordan, her future mother-in-law and Hana Fisher, Manager. Mike Stewart, Owner, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time sandwich artist for Loco Inc (Subway) from September 1, 2015 to May 5, 2016. She was discharged for misconduct after a customer reported she mishandled cash.

On April 26, 2016, the employer received a customer service comment stating the claimant rang up a sale but did not put the cash in the register. The customer indicated the claimant pocketed the cash. After discussing the situation with the owner and general manager, Manager Hana Fisher met with the claimant May 5, 2016, and notified her that the employer was terminating her employment because it no longer trusted her. The claimant denies taking any cash from the restaurant.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The employer does not have any surveillance video and based its decision to terminate the claimant's employment on a customer complaint. The customer wrote a comment accusing the claimant of stealing money from the employer, and another employee concurred with the customer's statement, but the employer could not provide the date this situation is alleged to have occurred. Additionally, there is no way to evaluate the customer's truthfulness, any possible bias on the part of the customer, or gain further details about the complaint. The

employer stated that “coincidentally” there was “always” \$5.00 to \$10.00 missing from the register when the claimant worked and that led the employer to believe the customer’s complaint. The employer indicated it was aware of this problem yet never spoke to the claimant about theft or issued her any warnings about her alleged conduct.

While the employer’s suspicions about the claimant may be true, it has not provided enough evidence for the administrative law judge to conclude the claimant mishandled cash by pocketing money from customers rather than placing it in the register. It could not provide the specific date this was supposed to have occurred nor dates or amounts when the claimant previously stole money from the employer and never warned the claimant or even mentioned the supposed conduct to her prior to her termination. The employer’s allegations do not constitute enough evidence to deny unemployment benefits. Therefore, benefits must be allowed.

**DECISION:**

The July 26, 2016, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs