

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAUS PETTY
Claimant

APPEAL NO. 13A-UI-08352-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

**OC: 06/23/13
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Nicholaus Petty (claimant) appealed an unemployment insurance decision dated July 16, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Fareway Stores, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 21, 2013. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Manager Dale Breuer and Maggie Worrall, Training and Development Specialist. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time grocery clerk from September 27, 2003 through June 27, 2013 when he was discharged for theft of company property. The employer suspected the claimant was stealing groceries based on credible reports from co-workers. Manager Dale Breuer and employee Ben Harthan observed the claimant carrying two bags of groceries to his car after he locked the store at 9:15 p.m. on June 26, 2013. He had not paid for the groceries and was subsequently arrested and criminally charged with theft. The claimant pled guilty to fifth degree theft on June 28, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on June 27, 2013 for theft of company property. He was criminally charged and pled guilty to theft in the fifth degree. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 16, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css