

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA L LILE
Claimant

APPEAL NO. 08A-UI-07254-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE BON-TON DEPARTMENT STORES INC
Employer

**OC: 07/06/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from representative's decision dated August 1, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on September 4, 2008. Although the claimant submitted a telephone number, she was not available at the number provided. The employer participated by Laura Behrens, human resource representative.

ISSUE:

The issue in the matter is whether the claimant was discharged for a current act of misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from October 2007 until June 30, 2008, when she was discharged for violation of company policy. Ms. Lile was employed as a customer service representative on a part-time basis and was paid by the hour.

The claimant was discharged on June 30, 2008, for an incident that had occurred on June 2, 2008. On that date, the claimant was observed ringing up her own purchase for a candy bar, in violation of company policy. Although the claimant attempted to explain that she was working alone and was hungry, a decision was nevertheless made to discharge the claimant. The claimant was allowed to work between June 2, 2008, and June 30, 2008, without being discharged. There is no reason in the record for the delay in terminating the claimant after the incident in question.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes the claimant was discharged for a current act of misconduct. It does not.

The evidence in the record establishes that the claimant was discharged for violating company policy by ringing up the purchase of a candy bar without having another employee ring up or verify the purchase. The evidence establishes that the claimant knew or should have known of the company policy. The evidence in the record, however, establishes that the act in question took place on June 2, 2008, and that for reasons that were unspecified the claimant was not discharged until June 30, 2008. The claimant was allowed to continue performing her duties during that period of time, and the employer alleges no other acts of misconduct between the date of the June 2 incident and the date of the claimant's discharge. The administrative law judge thus concludes that the claimant's termination from employment was not based upon a current act of misconduct.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

For the reasons stated herein, the administrative law judge concludes the claimant's discharge took place under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated August 1, 2008, reference 01, is hereby affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw