

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA J WADLE
Claimant

APPEAL NO. 09A-UI-16183-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

OC: 09/27/09
Claimant: Appellant (1)

Section 96.5-2-a - Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 15, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 2, 2009. Claimant participated. Employer participated by Rosemary Abbot, general manager, and Robert Brown, sales manager. The record consists of the testimony of Rosemary Abbot; the testimony of Robert Brown; and the testimony of Jessica Wadle.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case operates convenience stores. The claimant was a part-time sales associate at a store in Des Moines, Iowa. She was hired on November 10, 2008. The store where the claimant worked was located in the neighborhood where she grew up and as a result, her friends would come to the store. On May 7, 2009, the claimant was given a written warning concerning her performance. In particular, the employer noted that the claimant tended to socialize with her friends as opposed to watching the store. The claimant was told that she could not allow her friends to hang around the store while she was working.

An audit was done at the store on August 14, 2009, and it was discovered that a significant amount of merchandise was missing that could not be accounted for. All employees, including the claimant, were told that this loss of merchandise was unacceptable. Again the employees, including the claimant, were told that there was to be no loitering in the store and that friends could not hang out at the store.

The incident that led to the claimant's termination occurred on September 14, 2009. Ms. Abbott, the general manager, reviewed the store security tape and found that the claimant left the store

four times in one hour to go outside with her friends. The claimant sat on the hood of a friend's car and talked rather than tending to the store inside. The claimant's next scheduled day of work was September 18, 2009. She was terminated on that day by Robert Brown, the sales/assistant manager.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer can reasonably expect that an employee will perform the work assigned and follow reasonable work rules.

The evidence in this case established that the claimant breached this duty to the employer by allowing her friends to congregate at the store and socializing with them rather than watching the store. The claimant was given a written warning specifically addressing this concern and all employees were told the importance of securing the store's merchandise after an audit showed a significant loss of product. Despite her knowledge of how important these policies were to the employer, the claimant left the store four times in a one hour period and was seen sitting on the hood of a friend's car when she was supposed to be inside the store. The claimant's actions on September 14, 2009, were not a one-time occurrence but rather reflect a pattern of conduct that

conflicted with her employer's policies and specific instructions. The employer has shown misconduct and benefits are denied.

DECISION:

The decision of the representative dated October 15, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs