

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUANITA L ROE
Claimant

APPEAL NO: 12A-UI-00711-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOUTON FUEL STOP
Employer

**OC: 07/31/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Bouton Fuel Stop appealed a representative's January 10, 2012 decision (reference 05) that concluded Juanita L. Roe (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 8, 2012. The claimant participated in the hearing. Kaushal Kishore appeared on the employer's behalf. Amy Cook served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on November 18, 2010. As of April 13, 2011 she worked full time (32 hours per week) as a sales associate. Her last day of work was July 26, 2011. The employer discharged her on that date. The reason asserted for the discharge was sale of alcohol to a minor.

During the afternoon of July 12, 2011 the claimant did sell a six pack of beer to a customer who turned out to be under 21 years old. The claimant had requested to seek the customer's identification, but when the claimant entered the identification number into the employer's system, she transposed a number, so the system did not flag the customer as being under age. The employer was immediately informed of the violation and the store was assessed a fine of \$525.00.

On July 15 the employer's manager told the claimant that she would be allowed to continue her employment if she paid the store's fine by having it withheld from her pay; on or about July 17 the claimant responded that she would not pay the store's fine. Nothing further was said until the employer discharged the claimant on July 26.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer discharged the claimant was more that she had declined to pay the store's fine than the actual sale of alcohol to an underage customer. Seeking to require the claimant to allow her pay to be withheld to cover the store's fine is not allowed under Iowa Code § 91A.5. Discharging her for failure to agree to an illegal withholding is not misconduct. To the extent the discharge was for the underage sale itself, there is no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988). The incident in question occurred two weeks prior to the employer's discharge of the claimant. To the extent the incident might be treated as current because of the further discussion regarding the incident on July 17, under the circumstances of this case, the claimant's transposition of the numbers which lead to the erroneous sale to the minor was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 10, 2012 decision (reference 05) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css