

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THERESA CLAUSSEN**  
Claimant

**APPEAL NO: 13A-UI-04885-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FASSINO ENTERPRISE LLC  
AUDUBON SUPERMART**  
Employer

**OC: 06/24/12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Theresa Claussen (claimant) appealed an unemployment insurance decision dated April 24, 2013, reference 04, which held that she was not eligible for unemployment insurance benefits because she was discharged from Audubon Supermart (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 30, 2013. The claimant participated in the hearing. The employer participated through owner Michael Fassino and Peg Mikels, Deli Manager. 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:**

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 part-time deli worker from August 13, 2012 through April 8, 2013 when she was discharged for repeated disregard of the safety rules and rudeness to a customer. She was previously warned in October 2012 for being rude to a customer after the customer called in requesting chicken 15 minutes before closing. The claimant asked the customer if he was kidding and did not make the chicken. The owner was present in the store and warned her about her conduct. The deli manager repeatedly warned the claimant about not punching in early and not cleaning up her work area but the problems continued.

The employer requires employees to wear hats in the deli and to wear plastic gloves when working with food products for customers. The deli manager even posted a larger sign to remind employees to wear gloves. The owner received two complaints the week before termination about the claimant not wearing a hat and he issued her a warning about it. On April 7, 2013, a customer requested the claimant slice some cheese but she failed to put on

gloves. The customer requested she put on gloves but she told him she did not need to because she had just washed her hands. The customer insisted and the claimant eventually put them on but the customer felt like the claimant “smart-mouthed” him. The customer reported that the claimant had a band-aid on her hand but the claimant denied this allegation, as well as the allegation that she was rude. The employer discharged her on the following day since she had been previously warned about being rude to customers and following food safety rules.

## **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.

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.

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 April 8, 2013 for a repeated failure to follow the employer's directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). She had been warned numerous times about following safety rules and admitted she did not put on gloves when

preparing food for a customer on April 7, 2013. The claimant's refusal to follow safety rules shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. 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 April 24, 2013, reference 04, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs