

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
RUTH GUNN Claimant	APPEAL NO. 08A-UI-06047-SWT
BR STORES INC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 06/08/08 R: 12 Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 30, 2008, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 18, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Donna Bristol participated in the hearing on behalf of the employer with a witness, Mike Regester. Exhibits One through Three were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a product demonstrator from February 2, 2005, to May 4, 2008. Her supervisor issued a written warning to her on May 17, 2006, for failure to maintain sanitary practices, specifically licking her fingers and keeping clean gloves on at all times.

On May 4, 2008, a customer complained to management after the claimant had made a comment to the customer about taking a piece of cake without waiting for her. The customer found the comment rude. On the same day, a young girl had taken a piece of cake off the plate it was served on without taking the plate. The claimant contacted the girl's hand while trying to push her hand away. The girl complained to her mother who in turn complained to a manager. The claimant was sent home pending an investigation of the complaint. The store manager, Mike Regester, reviewed the video on a surveillance camera in the area and saw the claimant swipe at the child's hand in a slapping motion. Regester then discharged the claimant for having physical contact with a customer and for being rude to a customer on May 4, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe Regester's testimony about what he observed on the video and find no reason why he would testify untruthfully about this. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated June 30, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css