

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BETHANY S STARKWEATHER
Claimant

REIF OIL CO
Employer

APPEAL 15A-UI-04543-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/19/15
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the April 3, 2015, (reference 01) unemployment insurance decision that allowed. The parties were properly notified about the hearing. A telephone hearing was held on June 29, 2015. Claimant participated. Employer participated through Patty Langer, Supervisor. Employer's Exhibits One through Eleven were entered and received into the record.

ISSUES:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a store manager beginning on November 1, 2007 through March 16, 2015 when she was discharged.

The claimant was a poor time manager and took longer than other managers to perform the same required job duties. She had some staff shortages and instead of hiring new cashier help to perform those job duties, she would act as cashier herself. The claimant's store experienced excessive loss either through theft or shortage. The employer wanted her to keep her inventory up to date so that losses could be tracked. On some days the claimant worked she did not do any of her manager duties but instead acted as a regular employee because she was short of help. She was asking her supervisor for help in organizing her time and managing her work load. The claimant had taken over for her store manager who opted not to come back from maternity leave. As that is the way she was promoted, she did not receive formal training as she was already acting as an assistant manager. Throughout the month of February 2015 Stacy, the claimant's prior store manager, worked with her to try and help her manager her time more effectively and get organized.

During a March 11 disciplinary meeting the claimant was specifically told to get both the inventory caught up and to get all of the employees CAT scale forms filled out and notarized. The claimant told the employer she would get both tasks accomplished but by her discharge

date of March 16 the claimant still had not accomplished those tasks. The claimant simply was scattered and disorganized. The employer admits they believe that the claimant was doing the best she could do, but was simply not up to the job as store manager. When the employer discovered the inventory was not completed and the CAT scale forms were still not completed, the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. IDJS*, 386 N.W.2d 552 (Iowa App. 1986). The evidence establishes that the claimant simply was not capable of organizing her time in a manner to complete the job duties.

She had not ever been able to manage all of the duties and responsibility since she was promoted to store manager. She performed to the best of her ability but was not able to meet the employer's expectations. Under these circumstances the employer evidence does not establish intentional misconduct, as is the employer's burden of proof. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The April 3, 2015, (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css