

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Gene R. Stansberry was employed by Rubbermaid, Inc. from June 29, 1998 until he was discharged on August 31, 2005. On the date of discharge, the second shift supervisor advised Human Resources Manager Bob Pippin that one of his employees had seen Mr. Stansberry take a candy bar from a vending machine without paying for it. Mr. Stansberry had shaken the machine until the candy bar came loose. When Mr. Pippin confronted Mr. Stansberry, he admitted taking the candy bar.

Rubbermaid, Inc. has a policy providing for discharge for theft, including theft from a vendor. Mr. Stansberry received a copy of that policy on March 6, 2002. Mr. Stansberry had received prior warnings, but none involving theft. He has received unemployment insurance benefits in the gross amount of \$870.00 since filing an additional claim effective September 4, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with his work. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence establishes a deliberate taking by Mr. Stansberry of property not belonging to him. The evidence establishes deliberate actions contrary to the employer's interest. Benefits are withheld.

Mr. Stansberry has received unemployment insurance benefits to which he is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated September 22, 2005, reference 04, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He has been overpaid by \$870.00.

dj/kjw