

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CATHERINE R GOODMAN**  
Claimant

**ELMWOOD COUNTRY CLUB**  
Employer

**APPEAL 15A-UI-13150-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/28/14  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 19, 2015 (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 15, 2015. Claimant participated and was represented by Jacob Van Cleaf, Attorney at Law. Employer participated through assistant manager Carla Durnil, manager Kevin Bowman, and human resource manager/office manager Deb Wegner. Christina Grill of Employers Unity represented the employer.

**ISSUE:**

Was the claimant discharged for disqualifying job-related 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 waitress/assistant supervisor from February 15, 2011 and was separated from employment on October 23, 2015; when she was discharged. During the evening of October 14, after claimant had clocked out, Durnil passed bartender Jamie Hoglan who was going to get a mop. As Durnil was about to enter the 19th Hole Bar she observed claimant, standing alone at the patron side of the bar, put an unopened bottle of pinot noir wine with a distinctive yellowish/gold foil seal into her purse. When claimant saw Durnil she put her purse on the barstool behind her and began to chat with Durnil, who did not confront her. About that time Hoglan, a friend of claimant, returned. They continued to chat and then Durnil left the bar area. On October 15, Durnil reported the incident to Bowman. Later on October 15, Durnil spoke with the bartender and determined that there was one bottle missing from inventory of three bottles with that foil seal stocked that night. One was full and unopened at the bar, one was open with a glass sold from it, and the third was missing. Employees are allowed to purchase bottles of wine with permission from Bowman. There is no record of such a purchase. Neither party called Hoglan to testify. The employer's policy calls for discipline, including termination, for internal theft (Employer's Exhibit Two).

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

Theft is considered substantial misconduct and may result in disqualification even without prior warning. The question in this case turns on the credibility of Durnil compared to that of the claimant. Claimant argues that Durnil lied about the incident in order to get her fired because she did not like her and accused Durnil of lying to Bowman, who became manager in June 2013, about claimant not having worked in January and February during her employment when she had in 2012 and 2013 but not 2014. Claimant was not privy to the question of Bowman or Durnil's answer, and at best it was unreliable hearsay as were the rumors she referred to about Bowman's intent to fire Durnil as a morale breaker. Claimant also admitted going to Bowman about "problems" she had with Durnil. Durnil had significant details in her testimony about the details surrounding the incident, which were corroborated with the inventory

and lack of an employee sale. Thus, when compared to claimant's recollection of the event, the employer's evidence is credible. The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant engaged in theft of a bottle of wine from the employer. This is disqualifying misconduct.

**DECISION:**

The November 19, 2015 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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