

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-07888-H2
OC: 06-27-04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 15, 2004, reference 01, decision that denied benefits. After due notice was issued, an in person hearing was held on September 14, 2004 in Des Moines, Iowa. The claimant did participate along with her witness Richard Jensen and was represented by Patricia Wengert, Attorney at Law. The employer did participate through Mike Kueney, Store Director; Bruce Babcock, Pharmacy Manager; Tara Tucker, Personnel Director; Janet Troyer, Pharmacy Technician; Joan Vannordtrand, Pharmacy Technician and was represented by David Williams of Talx UC express. Employer's Exhibit One was received. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a pharmacy technician full time beginning April 21, 2002 through June 24, 2004 when she was discharged. The claimant was discharged for consuming products taken from the store prior to paying for them, or specifically for drinking three cans of pop over a number of days. The claimant took a twelve pack of diet cherry Pepsi from the store shelves and put the pop back in her work area in the pharmacy. The pop sat in the claimant's work area without her paying for it for at least one week. During that time, the claimant took on separate occasions three cans of pop from the twelve pack and drank them while she worked. On June 24, 2004, pharmacist Bruce Babcock asked all of the employees who owned the twelve pack of pop. The claimant said it was hers. Mr. Babcock asked her if she had paid for the pop and the claimant indicated she would pay for the pop at that time. Mr. Babcock had the claimant follow him to the office where she was told she was terminated for drinking the pop prior to paying for it.

The claimant admits that she knew it was a violation of the employer's policy to consume merchandise from the store prior to paying for it. The claimant and all of her coworkers had been reminded about the pay for it before you consume it policy in January 2004 and again in March 2004. The policy was also written in the employee handbook, which the claimant acknowledges she had received and read. The claimant had ample opportunity to pay for the pop as she had taken the twelve pack from the shelf by her own testimony at least one week prior to her termination. The claimant drank three cans of pop from the twelve pack on different occasions. The claimants drinking the pop amounts to theft of merchandise from the employer.

The other employees who worked in the pharmacy as technicians all indicated at hearing that they knew they were to pay for products prior to consuming them and there was no "unofficial" policy that it was ok to consume now, pay later as the claimant suggests. Mr. Babcock testified that he had never given anyone permission to routinely violate the pay for it before they consume it policy.

There is no credible evidence to suggest that the claimant was discharged for making complaints about how the pharmacy was being run. Management acted upon her complaints, but perhaps not to her satisfaction. Additionally, it is clear that the policy that allowed some pharmacy customers to pay for medications later did not apply to employees drinking pop prior to consuming it.

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 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).

An employer has a right to expect employees to conduct themselves in a certain manner, which includes expecting employees to follow clear policy directives. The employer has four hundred employees. If each employee were allowed to 'borrow' three cans of pop from the employer, the loss to the employer would be substantial. The claimant disregarded the employer's rights by failing to follow the pay for it before you consume it policy which she admits she knew about and was required to follow. There is no credible evidence that the claimant was discharged for any reason other than her violation of the pay for it before you consume it rule. The claimant's disregard of the employer's rights and interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The July 15, 2004, reference 01, 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.

tkh/kjf