

manager. She was discharged based on an allegation that she consumed a \$1.00 bottle of pop on September 8 without making payment for it. Store policy requires that all merchandise be paid for before it is consumed. Ms. Cline did not consume any pop at work on September 8 and did not consume any other merchandise without making payment for it. Her manager was at the store from the time Ms. Cline arrived until she was discharged and did not observe her drinking pop. The above allegation was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Cline was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Cline was discharged based on an allegation that she stole a bottle of pop. The employer did not provide testimony or a written statement from any individual who observed Ms. Cline engage in the conduct complained of. Her sworn denial of the employer's allegations was credible.

The employer discharged Ms. Cline based solely on the allegation that she stole pop on September 8. Inasmuch as that contention has not been established by the evidence, the administrative law judge concludes that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated October 6, 2005, reference 02, is hereby affirmed. Ms. Cline was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjw