

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**CHRISTAL M FOWLER**  
Claimant

**APPEAL NO. 09A-UI-16755-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VISTA BAKERY INC**  
Employer

**OC: 10/04/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 23, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 14, 2009. Claimant participated. Employer participated by Karen Robertson, human resources assistant, and Jason Gerstel, acting production manager. The record consists of the testimony of Karen Robertson; the testimony of Jason Gerstel; the testimony of Christal Fowler; and the testimony of Markita Conard.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer produces cookies and crackers at its plant in Burlington, Iowa. The claimant was initially hired on February 12, 2004. She was terminated on October 7, 2009, with her last day of work being October 1, 2009. She was suspended on October 1, 2009, for an offense that led to her termination.

The reason the claimant was terminated was the employer's belief that the claimant had thrown a cookie at Markita Conard, another employee. Throwing cookies at another employee is a safety violation and considered horseplay and grounds for termination according to the employee handbook. Markita Conard was working on October 1, 2009, and she did not see the claimant throw a cookie at her. The claimant did throw some cookies in a bin that she was sweeping up on the floor.

## REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant was terminated because the employer believed she threw a cookie at another employee named Markita Conard. Ms. Conard testified at the hearing and indicated that she did not see the claimant throw a cookie at her. The claimant testified that she was cleaning up and did throw some cookies in a bin or barrel. Jason Gerstel was specifically asked if throwing cookies in a bin or barrel would be a safety violation and he indicated that it would depend on the circumstances. For example, if a cookie was thrown across the line into a barrel, a safety violation would occur. If, however, the claimant was tossing cookies into a barrel or bin while sweeping, there would be no safety violation.

After carefully considering all of the evidence in this case, the administrative law judge concludes that there is insufficient proof of misconduct. The claimant admitted that she did throw some cookies, but she did not throw them at another employee. The claimant did toss some cookies into a barrel or bin but that action, in and of itself, does not constitute misconduct.

The employer has not shown a safety violation or provided any direct evidence that the claimant threw a cookie at another employee. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated October 23, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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