

**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**

**MATTHEW R LUERS  
414 E GLASGOW ST  
BURLINGTON IA 52601**

**BLOCKBUSTER INC  
c/o TALX EMPLOYER SERVICES  
PO BOX 1160  
COLUMBUS OH 43216-1160**

**Appeal Number: 06A-UI-04282-CT  
OC: 03/12/06 R: 04  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Blockbuster, Inc. filed an appeal from a representative's decision dated April 10, 2006, reference 02, which held that no disqualification would be imposed regarding Matthew Luers' separation from employment. After due notice was issued, a hearing was held by telephone on May 4, 2006. The employer participated by Dan Furlong, District Leader, and Gina Pauly, Store Manager. Exhibits One through Eight were admitted on the employer's behalf. Mr. Luers did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Luers was employed by Blockbuster, Inc. from

November of 2003 until March 14, 2006. He was last employed as a shift leader and worked 30 hours per week. He was discharged for misusing promotional materials and leaving the store safe open.

The employer was running a promotion with Coca-Cola whereby designated Sprite bottle caps could be used for a free video rental. On one occasion, Mr. Luers allowed a free rental without the bottle cap. He did so to encourage the customer to join the "Rewards" program with Blockbuster. The customer to whom he gave the free rental did join the "Rewards" program. The free rental was valued at \$3.50. The employer has a written policy, of which Mr. Luers was aware, that prohibits giving unauthorized deals, including free product.

When confronted by the employer, Mr. Luers indicated he felt he was helping the employer by giving a free video rental to encourage customers to join the "Rewards" program. As a result of his policy violation, Mr. Luers was discharged on March 14, 2006. The only prior disciplinary action was on July 5, 2005 when Mr. Luers left the safe open while the store was open to customers.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Luers 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). Mr. Luers was discharged for violating store policy on two occasions.

Mr. Luers left the store safe open in July of 2005. It appears that this was an isolated instance of such negligence. He gave a free video rental in February for the purpose of encouraging a customer to join the "Rewards" program. His conduct constituted a violation of store policy. He did not violate the policy to benefit himself. There was no evidence that the free video was provided to a friend or relative. Under the circumstances, the administrative law judge is inclined to view his conduct as an isolated instance of poor judgment. Mr. Luers' conduct did not constitute a substantial disregard of the employer's standards or interests.

While the employer may have had good cause to discharge Mr. Luers, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

#### DECISION:

The representative's decision dated April 10, 2006, reference 02, is hereby affirmed. Mr. Luers was discharged, but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kkf