

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

MINDY STUKEL
508 – 5TH ST APT 16
CORALVILLE IA 52241

HOB-LOB LIMITED PARTNERSHIP
C/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-08667-HT
OC: 07/18/04 R: 03
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant, Mindy Stukel, filed an appeal from a decision dated August 5, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 2, 2004. The claimant participated on her own behalf. The employer, Hob-Lob, participated by Store Manager Gary Moore and was represented by UC Express in the person of Pixie Allan.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Mindy Stukel was employed by Hob-Lob from November 17, 2003 until July 6, 2004. She was a full-time lead cashier.

On July 6, 2004, the claimant was summoned to the cash register area to help with a customer's request for a refund. The customer disagreed with the amount of the refund after Ms. Stukel had examined the receipt and the returned items and became agitated, claiming the store "sucked" and she was tired of "being accused of lying." She then took the photocopy of the receipt and the refund papers and attempted to leave the store. The claimant notified her several times she could not keep the pink refund documents as they were necessary for the store's records. The customer threatened to return them "in pieces" and, finally, the claimant took them from her.

Later that day, Store Manager Tracy McDonald discharged the claimant on orders from the corporate office.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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).

The employer was not able to present any firm evidence as to why the claimant was discharged, and the administrative law judge had to rely on the claimant's testimony of the events which, presumably, caused the discharge. A belligerent customer apparently complained to the corporate office about not being given the amount of refund to which she felt she was entitled and apparently accused the claimant of rudeness. Perhaps Ms. Stukel did not exercise the best technique in taking the refund document from the customer but did so in order to preserve company documents in the face of a threat by the customer to destroy them. This does not amount to substantial job-related misconduct but merely a one-time error in judgment. Disqualification may not be imposed.

DECISION:

The representative's decision of August 5, 2004, reference 01, is reversed. Mindy Stukel is qualified for benefits, provided she is otherwise eligible.

bgh/tjc