

**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**

**DEANNA L PEARSON
7800 ILLIS DR APT B14
URBANDALE IA 50322**

**SEARS HOME IMPROVEMENT
PRODUCTS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-02265-RT
OC: 02-01-04 R: 02
Claimant: Respondent (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 for Misconduct
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Sears Home Improvement Products, Inc., filed a timely appeal from an unemployment insurance decision dated February 27, 2004, reference 02, allowing unemployment insurance benefits to the claimant, Deanna L. Pearson. After due notice was issued, a telephone hearing was held on March 19, 2004, with the claimant participating. Jennifer Pudlo, Regional Office Manager for the Midwest, and Jon Gilge, District Sales Manager, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant. Employer's Exhibit 1 was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit 1, the administrative law judge finds: The claimant was employed by the employer as a full-time office coordinator from December 27, 2001 until she was discharged on February 4, 2004 for violating the employer's rules about proper time reporting. The employer has rules or policies in its handbook, a copy of which the claimant received and for which she signed an acknowledgement, providing for appropriate time reporting. Employees are responsible for filling out their own timesheets and do not punch time clocks. In the absence of evidence to the contrary, the employer relies upon the employees proper reporting of their time. On January 19, 20, 23, 26, 27, 28, 29, 30, 2004 the claimant incorrectly reported time that she clocked in, or left, or returned from lunch, or clocked out, as shown at Employer's Exhibit 1. The large number in the two timesheets are claimant's entries and the smaller numbers are the actual times the claimant should have clocked in or clocked out, either arriving at work or leaving for lunch or leaving work. In the fourth quarter of 2003 the employer's witness, Jennifer Pudlo, Regional Office Manager for the Midwest, received complaints from co-workers that the claimant was coming in tardy and leaving work early and taking long lunch breaks. Ms. Pudlo discussed this matter verbally with the claimant in October 2003 and gave the claimant a warning about proper time reporting. However, the claimant's conduct and improper reporting continued and came to the attention of the district sales manager, Jon Gilge. He began specifically watching the claimant and noting her times of arrival and departure both for work and for lunch during the times noted above. He prepared a spreadsheet on his observations, as contained in Employer's Exhibit 1. Ninety percent of the time he personally observed the claimant coming and going as noted. When these discrepancies on the claimant's timesheet came to light, the claimant was discharged on February 4, 2004. On February 3, 2004, Ms. Pudlo discussed these matters with the claimant and the claimant conceded that she was sometimes tardy by about five minutes. The claimant also indicated to her that she did not always document those tardies on her timesheets. The claimant also asked for another chance. In fact, when Ms. Pudlo called the claimant on February 3, 2004, at 2:20 p.m., the claimant was at lunch, having left for lunch at 1:00 p.m. and had not returned. On February 4, 2004, when the claimant was discharged, the claimant asked how others could get away by leaving early when she could not. Pursuant to her claim for unemployment insurance benefits filed effective February 1, 2004, the claimant has received unemployment insurance benefits in the amount of \$2,356.00 as follows: \$102.00 for benefit week ending February 7, 2004 (earnings \$300.00) and \$322.00 per week for seven weeks, from benefit week ending February 14, 2004 to benefit week ending March 27, 2004. Of this amount, \$707.00 was offset against an overpayment from 2000. The claimant's present overpayment balance is zero.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The administrative law judge concludes that the evidence establishes that the claimant reported improper or inaccurate time on her timesheet, as set out in the Findings of Fact and noted in Employer's Exhibit 1. The claimant adamantly denied that her time was inaccurate. However, her denials are not credible. The claimant conceded that she did tell Ms. Pudlo that she was occasionally tardy, but testified that she had not been tardy for one year. This is inconsistent. Further, the claimant denied an oral warning in October 2003 about time reporting, but admitted that she was warned about excessive lunch breaks, which is directly related to her time reporting. The claimant also denied making other comments to Ms. Pudlo that Ms. Pudlo credibly testified the claimant had made. Further, Jon Gilge, District Sales Manager and one of the employer's witnesses, credibly testified that he had concerns about the claimant's time reporting and specifically observed her 90 percent of the time, as shown at Employer's Exhibit 1. He conceded that there were gaps in his observations, and those gaps do appear in

Employer's Exhibit 1, when he was unable to observe the claimant. The testimony of the two employer's witnesses are consistent and credible, whereas the claimant's is inconsistent and not credible.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant did inaccurately and incorrectly report her time intentionally after receiving an oral warning and, therefore, are deliberate acts or omissions constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of an employer's interest and, at the very least, are carelessness or negligence in such a degree of recurrence, all as to establish disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,356.00 since separating from the employer herein on or about February 4, 2004, and filing for such benefits effective February 1, 2004, to which she is not entitled and for which she is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions Iowa law.

DECISION:

The representative's decision dated February 27, 2004, reference 02, is reversed. The claimant, Deanna L. Pearson, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits. She has been overpaid unemployment insurance benefits in the amount of \$2,356.00.

b/b