

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY A JORGE
Claimant

APPEAL NO: 10A-UI-06589-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHOPPERS SUPPLY
Employer

**OC: 03/28/10
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's April 20, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on June 23. The claimant participated in the hearing. James Stewart, the manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 13, 2008. She worked part time (25 to 30 hours a week) as a cashier. Prior to February 23, 2010, the claimant's job was not in jeopardy.

On February 23, 2010, the claimant purchased five pairs of boots for herself and her family. When a cashier rang up the transaction, the computer indicated the cost to the claimant was only a penny for each pair or a nickel for five pairs of boots. Before the claimant paid for the boots, she asked two managers if this amount was correct. The managers on duty told the claimant since the computer indicated this was amount to pay, this was the amount she needed to pay for the boots.

The claimant believed the boots cost the employer more than a penny. The boots the claimant bought cost the employer \$20.00 and \$35.25. A week after the claimant purchased the boots, she tried to bring them back because she knew the boots cost the employer more than a penny a pair. An assistant manager would not allow the claimant to return to boots. She told the claimant to forget about this or she would get other employees into trouble. The claimant did not believe she could say anything to Stewart.

On March 17, 2010, Stewart learned about the February 23 transaction when he received a report from the corporate office. When Stewart talked to the claimant, she indicated she had known this transaction was not right. Initially, the claimant understood she would not be discharged because the employer did not have any policy regarding this type of incident. The claimant knew Stewart was upset that employees purchased boots that cost the employer plus \$20.00 for just a penny.

On March 19, 2010, the employer (corporate office) discharged the claimant for paying a nickel for five pairs of boots that cost the employer \$100.00 to \$175.00.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant questioned the cost of the boots when the transaction was initially rung up on the cash register. After two managers told the claimant she only had to pay what the computer indicated, she purchased five pairs of boots for a nickel. A week later, the claimant tried to bring back the boots because she believed the boots cost the employer more than a nickel and understood employees were required to pay at least the cost of an item. An assistant manager would not allow the claimant to return the boots and told the claimant not to say anything. It is at this point, the claimant committed work-connected misconduct. She knew purchasing five pairs of boots for a nickel was not the price the employer had to pay for the boots and it was wrong to pay a nickel for these boots. The claimant had even been warned by another employee that if she said anything other employees would get into trouble. The claimant's failure to advise Stewart the price of the boots had not been inputted correctly into the computer system amounts an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of March 28, 2010, the claimant is not qualified to receive benefits.

DECISION:

The representative's April 20, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant

is disqualified from receiving unemployment insurance benefits as of March 28, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css