

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUKHSANA BACHELANI
Claimant

APPEAL NO. 14A-UI-08065-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

K MART CORP
Employer

OC: 07/13/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 31, 2014, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued an in person hearing was held on August 29, 2014 at Des Moines, Iowa. The claimant did participate. The employer did participate through (representative) Chelsea Guiffrie, Lost Prevention Associate and Peggy Smith, Human Resource Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part time as a layaway associate and cashier beginning on September 24, 2008 through July 14, 2014 when she was discharged.

The employer has an incentive program for customers called "Shop Your Way to Rewards" (SYWR). When a customer makes a purchase they earn 'points' that can be redeemed for other merchandise in the store. The claimant as a cashier had training on the program and knew that if a customer was not participating in the SYWR program that she was not allowed to enter her own SYWR account number into the system to take credit for the points the customer would have earned had they been in the program. The claimant had been given a written warning on March 18, 2014 that put her on notice that failure to follow the rules of the company program would subject her to discipline up to and including termination.

The corporate office notified the store that the claimant's SYWR account number was being used in a manner they thought was fraudulent. Ms. Guiffrie investigated by reviewing surveillance video and matching it with the electronic journal entries. She reviewed transactions that entered points into the claimant's account and redeemed points from the claimant's account on July 10, 3, June 24, May 8, 4 and April 19, 12. She met with her supervisor, Chuck Taft, who also reviewed the electronic journal. Mr. Taft prepared page one of Employer's Exhibit One

which shows that the claimant redeemed \$32.15 in points that did not belong to her. The claimant admitted that she did redeem points that she had accumulated from transactions of customers. Her actions in redeeming the points did not benefit her employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The claimant had been trained on the employer's program and was required to follow the program rules. She violated the employer's program by taking points from transactions of customers who were not participating in the program. She knew she was not to do so, but did redeem the points. The claimant had a prior warning about following the rules of the program. Her actions constitute substantial misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The July 31, 2014 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs