

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ETHEL M RUDEBECK
Claimant

APPEAL NO. 13A-UI-09618-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

**OC: 07/28/13
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Dillard's, filed an appeal from a decision dated August 16, 2013, reference 01. The decision allowed benefits to the claimant, Ethel Rudebeck. After due notice was issued, a hearing was held by telephone conference call on September 25, 2013. The claimant participated on her own behalf. The employer participated by Assistant Store Manager Kay Byers and Store Manager Cindy Young.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

FINDINGS OF FACT:

Ethel Rudebeck was employed by Dillards from July 21, 1997 until July 9, 2013 as a full-time sales associate. She had received a copy of the work rules for sales associates and signed an acknowledgement of receipt. The work rules prohibit sales associates from using their employee discount for anyone other than themselves.

In June 2013 Assistant Store Manager Kay Byers had reminded Ms. Rudebeck about the policy because there had been some suspicion she had been buying items for customers using the discount. The employer told her she could be fired if there were any verified incidents.

On July 6, 7 and 8, 2013, one customer had approached a sales associate in the department where the claimant worked asking if "Ethel" was working, and was told she was not. On July 8, 2013, the customer asked the sales associate if she could purchase a handbag using the associate's discount "like Ethel." The customer was told it was against the work policies for an employee to use the discount for another person's purchase.

Ms. Byers had been informed of this and she instructed the security office to monitor this customer should she return. On July 9, 2013, the customer did return and she and Ms. Rudebeck conferred. The customer had one handbag already on "hold" and selected another one with the claimant. Both were put aside and the customer left. Ms. Rudebeck later moved the bags to the storage room and later purchased them using her employee discount. These transactions were verified via the computer records as well as the video surveillance footage.

Ms. Byers and Store Manager Cindy Young met with the claimant about the incident. Ms. Rudebeck admitted she had done this and had done it in the past. She did not think it was "any big deal." At the appeal hearing the claimant maintained she had purchased the handbags as a gift for the customer, but could not adequately explain why the customer had not simply purchased them herself, or why she had approached the other sales associate looking specifically for Ms. Rudebeck and inquired if that associate would use her employee discount to purchase the handbags.

Ethel Rudebeck has received unemployment benefits since filing a claim with an effective date of July 28, 2013. The employer did participate personally in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant was aware of the policy which prohibits the use of the employee discount for anyone other than the employee. The claimant's explanation the handbags were purchased as a gift is not credible. The customer specifically asked for Ms. Rudebeck on three prior days, selected a second handbag the day the claimant was in the department, and then left without purchasing either item. The fact the customer asked the other sales associate if the employee discount could be used "like Ethel" indicates this type of transaction had occurred in the past.

The claimant had good reason to know this was not allowed, not only from the work rules but from Ms. Byers' reminder a month before this final incident. The employee discount is a benefit to employees, not to be shared by the public or the personal friends of employee. While the claimant maybe thought it was "no big deal" obviously the employer did or else there would be no work rule prohibiting it.

The record establishes the claimant was discharged for violation of a known company rule after being warned. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's decision of August 16, 2013, reference 01, is reversed. Ethel Rudebeck is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The claimant is overpaid \$1,064.00 in unemployment benefits.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css