

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY L MCINTYRE
Claimant

APPEAL NO. 07A-UI-04724-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARSON PIRIE SCOTT INC
Employer

**OC: 04/15/07 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated May 14, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits based upon her separation from Carson Pirie Scott Inc. After due notice was issued, a hearing was scheduled for and held by telephone on May 24, 2007. The claimant participated personally until disconnecting during the hearing. Appearing as witnesses for the employer were Lesley Forbush, John Woosley, Christina Griffith, and Paul May. Exhibits One through Eight were received into evidence.

ISSUE:

The issues in this matter are whether the claimant was discharged for misconduct in connection with her work and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from April 10, 2005, until April 18, 2007, when she was discharged for theft and other serious policy violations in connection with her work. Ms. McIntyre worked as a part-time sales associate and was paid by the hour. Her immediate supervisor was Lesley Forbush.

Ms. McIntyre was discharged from her employment after she admitted to numerous intentional violations of company purchasing, discount, and return policies. The claimant was personally observed by a loss prevention personnel secreting items, removing property without remuneration, utilizing other employee identification for purchases, violating company discount policies, and defrauding the company by returning merchandise that had been purchased at discount for its full undiscounted value. The claimant was aware of company policies regarding transactions, purchases, discounts, and integrity, and had acknowledged receiving company handbooks and training with respect to these matters. The claimant also engaged in violating company policy by remaining away from her workstation for extended periods after clocking in for work.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge, having heard the evidence in the record, concludes that the claimant engaged in ongoing, intentional conduct that was clearly in disregard of the employer's interests and reasonable standards of behavior. The evidence establishes that Ms. McIntyre had received training and had acknowledged receiving company handbooks explaining the company policies with respect to purchases, employee discounts, returns, and other pertinent policies related to her position as a sales associate. Although aware of the policy, Ms. McIntyre engaged in ongoing, intentional conduct designed to defraud the company of time, merchandise, and remuneration in the form of payment for returned items purchased at employee discount and returned for full value. The record is clear in this case that the claimant knew that her conduct was in willful disregard of the employer's interests and standards of behavior. At the time that she was confronted, the claimant admitted to intentionally violating policies. During the hearing in this matter, the claimant initially participated, subsequently disconnecting, before the end of hearing.

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.

For the reasons stated herein, the administrative law judge finds that the claimant engaged in intentional disqualifying misconduct in connection with her work. Benefits are withheld.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$525.00

DECISION:

The representative's decision dated May 14, 2007, reference 01, is reversed. The claimant was discharged for intentional, ongoing misconduct. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefits amount, provided she satisfies all other eligibility requirements of the law. The claimant has been overpaid benefits in the amount of \$525.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw