

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

PATRICIA R SILVERMAN
Claimant

APPEAL NO: 18A-UI-08295-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KOHL'S DEPARTMENT STORES INC
Employer

OC: 07/01/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 27, 2018, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 24, 2018. The claimant participated in the hearing. Cory Eggenberger, Store Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time point-of-sale register associate for Kohl's Department Stores, Inc. from August 18, 2015 to April 26, 2018. She was discharged after loss prevention alleged she gave multiple cash off discounts.

On April 9, 2018, the corporate loss prevention department contacted the store and district loss prevention departments and stated the claimant was flagged for several cash off discounts. Loss prevention also believed the claimant and many other associates were giving customers double 30 percent discounts when they opened charge accounts in 2016 and early 2017. In early spring of 2017, the employer met with employees one on one about the double discounts but the claimant denies being involved in any one on one coaching sessions about that issue or that she gave double discounts. The employer stated that practice became almost non-existent in the store after the coaching occurred.

The employer could not provide the date of any of the cash off discount transactions during which it believes the claimant violated policy. The claimant testified that during her interview with loss prevention it did not provide her any specific instances either. The employer terminated the claimant's employment April 26, 2018, after loss prevention spoke to her and recommended her discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *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 substantial and 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).

While the employer's loss prevention department believed the claimant was issuing cash off discounts, the employer did not provide any evidence to substantiate that claim. There were no specific dates or amounts of the alleged transactions supplied by the employer and the claimant's denials of the charges were credible and persuasive. Additionally, the claimant did

not have anything to gain by giving cash off discounts in violation of the employer's policy as the financial rewards were negligible at best.

Under these circumstances, the administrative law judge concludes the employer has not met its burden of proving disqualifying misconduct on the part of the claimant. Therefore, benefits are allowed.

DECISION:

The July 27, 2018, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn