

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE M STORM
Claimant

APPEAL NO. 10A-UI-03998-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KMART CORPORATION
Employer

OC: 01/24/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Michelle Storm, filed an appeal from a decision dated March 12, 2010, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 29, 2010. The claimant participated on her own behalf. The employer, Kmart, participated by Assistant Store Manager Kelly McFarland. Exhibits One and Two were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Michelle Storm was employed by KMart from April 4, 2009 until February 4, 2010 as a part-time cashier. On January 4, 2010, the claimant was observed by Loss Prevention Manager (LPM) Jean Moure ringing up a transaction for herself for a phone card, which she then voided. It is against policy for cashiers to ring up a transaction for themselves but that violation was not investigated. The LPM made a record of what he observed and continued watching the claimant.

On February 2, 2010, he again saw her ring up a game card and then void the transaction. She was interviewed by LPM Dell Hicks on February 4, 2010, during which time she admitted to taking the cards in the value of \$300.00. She was discharged at that time after signing the separation statement agreeing she had misappropriated store merchandise.

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 acknowledged she had signed the admission of theft but at the appeal hearing denied she had done so. Her assertion was that she was locked in the interview room with two LPMs and Assistant Store Manager Kelly McFarland. There is no evidence the door was locked, only that it was closed for privacy. She was not forbidden to leave or threatened with harm if she did not sign the paper. Ms. Storm was apparently under the impression if she signed the paper she would not be fired and criminal charges would not be filed, but the employer did not make any such promises.

The claimant acknowledged misappropriation of company merchandise. 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.

DECISION:

The representative's decision of March 12, 2010, reference 02, is affirmed. Michelle Storm is disqualified and benefits are withheld until she had requalified by earning ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs