

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARA L TENO
Claimant

APPEAL NO. 12A-UI-09231-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

OC: 07/01/12
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated July 25, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 23, 2012. Claimant participated personally. The employer participated by Mr. Jason Wolff, Store Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Dara Teno was employed by Dillard's Inc. from August 9, 2011 until June 21, 2012 when she was discharged from employment. Ms. Teno last held the position of full-time lingerie manager and was paid by the hour. Her immediate supervisors were Jason Wolff and Kathy Cronin.

Ms. Teno was discharged from employment when a company investigation determined that the claimant had used money remaining on a customer's debit card for the claimant's own personal purchases. Company policy requires employees to turn in credit cards or debit cards that are inadvertently left by patrons. When confronted about the allegation that she had used the remaining balance on a customer's debit card for her own purchases, Ms. Teno did not dispute the allegation and provided no further exculpatory information to the employer about the incident. Based upon the employer's reasonable perception that the claimant had violated company policy by using the funds of a patron for her personal purchases, a decision was made to terminate Ms. Teno from her employment.

It is the claimant's position that she was "given" the debit card in question by her roommate because the roommate had owed Ms. Teno money. It is the claimant's further position that although Ms. Teno had lost her job over the incident, she did not question her roommate further

about how the card had come into the roommate's possession or any other factors, because the claimant wanted to keep the relationship with her roommate harmonious.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the claimant was discharged based upon the employer's reasonable belief that she had violated company policy by converting to her own use funds remaining on a customer's debit card. It was the employer's belief that the card had not been turned in to the company's lost and found department as per company policy and that the claimant had intentionally used the card for her own benefit in violation of established company policies.

When confronted with the employer's beliefs and allegations, Ms. Teno did not deny them and provided no additional information to the employer about how she had acquired the card or her belief that she was authorized to use the remaining funds. The administrative law judge concludes that the employer was reasonable in making a management decision to discharge Ms. Teno from employment based upon the results of its investigation and the claimant's failure to deny the allegations.

While the administrative law judge is aware that Ms. Teno maintains now that the card belonged to her roommate and that Ms. Teno had no idea that she was unauthorized to use the funds, the administrative law judge concludes that the claimant's testimony strains credibility. When the claimant was given the chance to provide any extenuating circumstances to her employer prior to her discharge, she declined to do so. The administrative law judge also finds the claimant's testimony to strain credibility that she did not confront her roommate about the matter. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated July 25, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs