

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN G ROWEDDER**  
Claimant

**APPEAL NO. 11A-UI-09934-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LENSCRAFTERS INC**  
Employer

**OC: 06/26/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated July 21, 2011, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on August 22, 2011. The claimant participated personally. The employer participated by Mr. Tom Kuiper, hearing representative, and witnesses Julie Miller, regional manager, and Frank Mazzacano, regional manager loss prevention. Employer's Exhibits One and Two were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Kevin Rowedder was employed by Lenscrafters, Inc. from March 8, 1993, until June 28, 2011, when he was discharged for violation of company policy. Mr. Rowedder held the position of full-time store manager and was paid by the hour. His immediate supervisor was Julie Miller.

The claimant was discharged based upon the employer's reasonable belief that Mr. Rowedder was violating company policy by making sales of items that were not available in the store facility that Mr. Rowedder managed. Based upon statements made by clients and a statement made by Mr. Rowedder, the employer believed that the claimant was violating company procedures sending clients to other company store locations to obtain glasses that Mr. Rowedder had sold but were not available at his store. Company policy requires store managers to arrange direct sales from other sales with the customer themselves and representatives of the other store. Employees are prohibited from selling items that they do not have available at the facility where they are employed. The company believed that Mr. Rowedder violated the company policy to make his store's sales appear higher than they were to obtain additional bonuses.

## REASONING AND CONCLUSIONS OF LAW:

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

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 benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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 App. 1992).

In this matter, the evidence in the record establishes that Mr. Rowedder was aware of the company policy that required a direct contact between the claimant and other stores to facilitate sales of items that were not in stock at the facility that Mr. Rowedder managed. Based upon statements from clients and the statement of Mr. Rowedder himself, the employer concluded that the claimant was violating the policy to obtain commissions or bonuses that were not justified. Because the employer considered the claimant's actions to be a falsification of company records, the decision was made to terminate Mr. Rowedder from his employment.

The administrative law judge concludes that the claimant's failure to follow the established company policies regarding the sale of merchandise that was not in stock was contrary to the interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated July 21, 2011, 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 his weekly benefit amount, provided he meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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