

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SANDRA KAY PRICE**  
Claimant

**APPEAL NO. 17A-UI-00276-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**K-MART CORP**  
Employer

**OC: 12/04/16**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Sandra Price filed a timely appeal from the December 30, 2016, reference 02, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Price was discharged on December 5, 2016 for theft of company property. After due notice was issued, a hearing was held on January 31, 2017. Ms. Price participated. Kelli Springer represented the employer and presented additional testimony through Ian Fox. Exhibits 1, 2 and A were received into evidence.

**ISSUE:**

Whether Ms. Price was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Sandra Price was employed by the K-Mart in Iowa City as a part-time cashier from 2014 until November 28, 2016, when the employer discharged her from the employment.

Throughout Ms. Price's employment, the employer had a Shop Your Way customer loyalty program that rewarded customers with loyalty points for purchases that the customers' purchases. The reward points, at minimum, were valued at one percent of the customer's purchase. K-Mart periodically increased the value of reward points in connection with special promotions and clearance of merchandise. Ms. Price received training regarding the Shop Your Way rewards program at the start of her employment. Ms. Price dealt with the Shop Your Way rewards program each day of her employment and in connection with each transaction she rang up at her register. In connection with each transaction, Ms. Price was responsible for determining whether the customer was enrolled in the rewards program. If the customer was enrolled, Ms. Price was responsible for obtaining the customer's phone number so that Shop Your Way reward points could be added to the customer's rewards account. If the customer was not enrolled in the rewards program, Ms. Price was responsible for attempting to persuade the customer to enroll in the program. The employer tracked the percentage of total transactions handled by the cashier that involved customer participation in the rewards program

and posted those percentages for all employees to see along with a note regarding which cashiers needed to improve their percentage on rewards related transactions.

The employer allowed employees to participate in the rewards program and accrue rewards points based on their own purchases.

Between October 11, 2016 and November 28, 2016, Ms. Price on 49 occasions entered her own phone number in connection with customer transactions and thereby applied rewards points from the customers' transactions to her own rewards account. At other times, Ms. Price entered telephone numbers belonging to her friends and acquaintances in connection with customer transactions. Ms. Price entered these numbers for two reasons. She entered the numbers to inflate the percentage of her transactions that involved participation in the rewards program. She also entered her number to personally gain unauthorized rewards points from the customer's transaction. Ms. Price knew all along that she was violating the employer's policy regarding the rewards program and that she was violating the employer's policy that prohibited her from ringing up her own transactions. Ms. Price redeemed \$248.82 worth of rewards points that she accrued primarily through repeated violation of the employer's policy.

Each time Ms. Price entered her own phone number in connection with a transaction at her assigned register, the employer's loss prevention software flagged the transaction as questionable. The employer's loss prevention software flagged the 49 transactions between October 11 and November 28.

On November 22, 2016, Chuck Taft, Area Loss Prevention Manager, commenced his investigation of Ms. Price's suspected abuse of the rewards program.

On November 28, 2016, Mr. Taft went to the Iowa City K-Mart and questioned Ms. Price. Mr. Taft noted in his incident report that Ms. Price had used her phone number in connection with a customer transaction at her register that very day. In connection with Mr. Taft's interview of Ms. Price, he provided her with an opportunity to write a statement regarding her conduct. Mr. Taft did not tell Ms. Price what to put in her statement. Ms. Price wrote in her statement that she had used her rewards number several times to keep her Shop You Way percentage up, that she had redeemed \$248.82 worth of rewards points, that her conduct had been wrong and that she had given away some of the merchandise redeemed through the ill-gotten loyalty points. Ms. Price offered to repay the employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

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 proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant 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 Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes that Ms. Price knowingly and intentionally engaged in a pattern of conduct that violated the employer's rewards program policy to engage in self-dealing through which she accrued customer loyalty rewards points that she later redeemed for merchandise. Ms. Price's conversion of the employer's property to her own use constituted theft from the employer. Ms. Price's pattern of misconduct continued through the last day of her employment. Ms. Prices' repeated violation of policy, her inflation of her rewards program participation percentage, and her theft from the employer demonstrated willful and wanton disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Price was discharged for misconduct in connection with the employment. Accordingly, Ms. Price is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. She must meet all other eligibility requirements. The employer's account shall not be charged. .

**DECISION:**

The December 30, 2016, reference 02, decision is affirmed. The claimant was discharged for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs