

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARCIA L ADAIR**  
Claimant

**APPEAL NO. 11A-UI-02016-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**  
Employer

**OC: 12/05/10**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated February 10, 2011, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 16, 2011. The claimant participated. The employer participated by Beth Fetzer, senior executive team leader—foods. The record consists of the testimony of Beth Fetzer; the testimony of Marcia Adair; and Employer's Exhibits 1 through 4.

**ISSUES:**

Whether the claimant was discharged for misconduct; and

Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as a full-time fitting room attendant in the employer's store located in West Des Moines, Iowa. The claimant was hired on March 13, 2007. The claimant was an excellent employee and highly regarded by the employer. The claimant's last day of work was December 10, 2010. She was terminated on December 10, 2010.

On November 19, 2010, the claimant was cleaning out a fitting room and found a gift card. She tossed it on her desk. Later, she checked on the amount of the gift card and found it was worth \$50.00. The claimant used the gift card personally. She did not turn the card in to the employer.

The claimant thought about what she had done and on November 20, 2010, she reported what she had done to the asset protection coordinator. An investigation ensued. The matter was turned over to human resources. The claimant was found to have violated provisions against theft in the team members' handbook. The employer has a zero tolerance for employee theft and the claimant was terminated.

## 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed by a worker to an employer is honesty. The employer has the burden of proof to show misconduct.

The claimant testified that she did find a gift card that did not belong to her and that she spent the card to purchase items for herself. She acknowledged she made a very poor decision and that she had been excited about finding the money, especially with Christmas approaching. The claimant realized that she had done something wrong and self-reported what she had done to the employer. The employer spent a lot of time investigating the matter and a reasonable inference from the testimony is that this was a difficult situation for both the employer and the claimant, because the claimant was an excellent employee.

Although good-faith errors of judgment or discretion in isolated situations are not misconduct for unemployment insurance purposes, the claimant's actions cannot be characterized in that manner. The claimant knew that what she did was wrong. It took a great deal of courage on her part to come forward and admit what she had done. There are unfortunate consequences that follow after dishonesty. In this case, the administrative law judge concludes that the evidence has established misconduct. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the claims section for determination.

**DECISION:**

The representative's decision dated February 10, 2011, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The overpayment issue is remanded to the claims section for determination.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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