

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMIE S HANSON
Claimant

APPEAL NO. 08A-UI-02480-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

K MART CORPORATION
Employer

OC: 02/03/08 R: 02
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, K Mart, filed an appeal from a decision dated March 3, 2008, reference 01. The decision allowed benefits to the claimant, Tammie Hanson. After due notice was issued, a hearing was held by telephone conference call on March 27, 2008. The claimant participated on her own behalf. The employer participated by Loss Prevention Coach Thacker Block and Human Resources Manager Natasha Oelkers. 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:

Tammie Hanson was employed by K Mart from November 20, 2000 until February 7, 2008, as a full-time soft lines lead. She had received the employee handbook as well as a code of conduct memo dated July 3, 2003. That memo prohibited issuing cash loans and advances not approved through the regional vice president.

On February 3, 2008, the claimant wrote a check to K Mart which was not to purchase merchandise. She asked Store Manager Steve Pelham and he agreed to give her cash and hold the check until February 10, 2008, before cashing it. Ms. Hanson needed the money to pay her insurance and did not have sufficient funds in her checking account to cover the check on that day.

The store auditor found the check on February 4, 2008, and notified the district manager who referred the matter to Loss Prevention Coach Thacker Block. He interviewed the claimant the next day and she admitted to writing the check for cash at a time when she did not have sufficient funds in her account to cover the check. Both the claimant and store manager were discharged for violation of the company policy.

Tammie Hanson has received unemployment benefits since filing a claim with an effective date of February 3, 2008.

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 was discharged for violation of a known company rule. This appears to have been a one-time occurrence, and in order to be disqualified from unemployment benefits for a single incidence of misconduct, the misconduct must be a deliberate violations or disregard of standards of behavior which the employer has the right to expect of employees. Henry v. IDJS, 391 N.W.2d 731 (Iowa App. 1986). The claimant committed a form of fraud on the employer by writing a check for money she did not have. There was no absolute assurance the money would be available later to cover the check and the employer might have been faced with a loss of revenue as a result. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of March 3, 2008, reference 01, is reversed. Tammie Hanson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$360.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css