

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MOLLY M UNERTL
Claimant

APPEAL NO. 10A-UI-01967-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENSCRAFTERS INC
Employer

OC: 01-03-10
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 28, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 13, 2010. The claimant did participate. The employer did participate through Amanda Thurman, Regional Team Lead and Laurie Gonzales, Loss Prevention and was represented by Tom Kuiper of Talx UC Express. Claimant's exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an optical team lead full time beginning April 6, 2009 through January 8, 2010 when she was discharged. The claimant was discharged for misuse of gift cards. The claimant rang up four gift cards that were to be given to customers who purchased glasses under a promotion the employer was running. Under the promotion each customer was entitled to only one gift card, no matter how many pairs of glasses they purchased. One of the customers was the claimant's sister. The claimant told her sister that she would receive two gift cards because she purchased two pairs of glasses. The claimant realized she had informed her sister incorrectly, but gave her the two gift cards anyway. The claimant's sister gave the claimant her gift cards to use, indicating that her sister really had no interest in whether she received one or two gift cards. The claimant did not return one of the gift cards to the employer, even though no customer would have been deprived of the gift card and even though she knew she should only have given her sister one card. The claimant used both of the gift cards to make purchases from Target.

The claimant also used a third gift card that should have been given to another customer. The claimant offers no credible explanation as to how the gift card ended up in her possession and being used by her. The claimant knew that misuse of the gift cards violated the employer's policies. Because the claimant was the employee who rang up the gift card transaction and she was also the person who used the gift cards, the computer system flagged the purchases as

suspect and promoted the employer to begin the investigation. The employer learned of the gift card transactions and use by the claimant on December 23, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The administrative law judge can understand how the claimant would have given her sister two cards as she misunderstood the policy. However, when the claimant's sister gave her the cards to use, the claimant had the perfect opportunity to make her employer whole, by returning the gift card to the employer. She did not do so. Additionally, the claimant offers no credible explanation for the use of the third gift card that never belonged to her. The administrative law judge is not persuaded that anyone other than the claimant put that gift card in her wallet and used it. Her use of gift cards that rightfully did not belong to her amounts to misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The January 28, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs