

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARIAUNA BASKERVILLE
Claimant

APPEAL NO. 13A-UI-09617-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARDS INC
Employer

**OC: 07/28/13
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer, Dillards, filed an appeal from a decision dated August 16, 2013, reference 01. The decision allowed benefits to the claimant, Ariauna Baskerville. After due notice was issued a hearing was held by telephone conference call on September 25, 2013. The claimant provided a telephone number where she could be reached. That number was dialed at 8:59 a.m. and the only response was a message stating the voice mail box for the subscriber had not been set up. The employer participated by Assistant Store Manager Kay Byers and Store Manager Cindy Young.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

FINDINGS OF FACT:

Ariauna was employed by Dillards from February 14 until July 26, 2013 as a part-time sales associate. At the time of hire she received a copy of the work rules, one of which prohibits an employee from using their employee discount to purchase items for anyone except themselves. Assistant Store Manager Kay Byers had sent out an e-mail earlier in the month remind all associates of this policy and emphasizing violations of the rule would result in discharge.

On July 26, 2013, the security office notified Ms. Byers of a transaction which had just occurred. Ms. Baskerville had rung up a transaction for another sales associate but handed the item purchased to a customer. The claimant was questioned and admitted she knew the rule regarding employee discount and that she had known the other sales associate was purchasing the item for the customer. She was discharged at that time.

Ariauna Baskerville has received unemployment benefits since filing a claim with an effective date of July 28, 2013. The employer did participate in the fact-finding interview.

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 knowingly violated the employer's policy forbidding employees to use their discount for anyone other than themselves. Although she did not use her own discount she knowingly facilitated another employee to violate the policy. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's decision of August 16, 2013, reference 01, is reversed. Ariauna Baskerville is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

The claimant is overpaid in unemployment benefits in the amount of \$819.00. This amount must be recovered in accordance with the provisions of Iowa law.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css