

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENASI J BERCH
Claimant

APPEAL NO: 08A-UI-03984-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

**OC: 03/23/08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jenasi Berch (claimant) appealed a representative's April 14, 2008 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Dillard's (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 8, 2008. The claimant participated personally. The employer participated by Lori Flahive, Operations Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 6, 2006, as a full-time sales associate assigned to the Chanel cosmetic counter. When the claimant was trained for the job her counter manager told her not to perform any makeovers without a purchase. The cosmetic manager was aware the counter manager was telling employees this policy. All cosmetic counter employees were telling customers this except for the Clinique counter. Many teenage customers wanted makeovers but did not want to purchase. Clinique had a younger line of cosmetics and it was trying to appeal to the teenage customer.

On or about March 19, 2008, a customer asked the claimant if her daughters could have makeovers. The claimant told the customer that she could perform a makeover if the customer made a purchase. The customer complained. The employer terminated the claimant on March 21, 2008. The claimant had no previous warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant's singular customer complaint for following a practice on which she was trained does not rise to the level of misconduct. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 14, 2008 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs