

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIELLE L WATERS**  
Claimant

**APPEAL NO. 08A-UI-11124-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEB SHOPS INC**  
Employer

**OC: 10/19/08 R: 02**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Deb Shops, filed an appeal from a decision dated November 20, 2008, reference 01. The decision allowed benefits to the claimant, Danielle Waters. After due notice was issued, a hearing was held by telephone conference call on December 11, 2008. The claimant participated on her own behalf. The employer participated by Store Manager Nikki Milik and was represented by TALX in the person of Michelle Hawkins.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Danielle Waters was employed by Deb Shops from March 31, 2008 until October 17, 2008 as a full-time assistant manager. At the time of hire, she had received a copy of the manual, which set out the employer's policies and procedures. One policy requires that any purchase made by an employee can only be rung up by a member of management. A printed copy of the sales transaction must then be signed by the employee making the purchase, the manager who rung up the sale, and another employee who witnessed the sale.

Ms. Waters' performance had been satisfactory up until the beginning of October 2008. On October 1, 2008, she received her first write up because she had overslept and did not open the store as the opening manager. On October 2, 2008, District Manager Teresa Van Zee had verbally warned her to stay "in her zone," that is the area of the store to which she was assigned in order to assure customer service and prevent theft. She was written up by Store Manager Nikki Milik on October 9, 2008, for again failing to be in her zone and properly monitor the store. She was advised in that warning her job was in jeopardy.

On October 15, 2008, Ms. Milik heard the claimant discussing with another employee an article of clothing she had recently purchased and was intending to wear to an event. The manager did not recall seeing any of the required purchase documentation in the store's records, so she checked again. There was no documentation regarding the purchase by Ms. Waters, so a search was made of the computerized store transactions. The record of the sale was located and it had been made on October 7, 2008, and rung up by a part-time hourly employee instead of a member of management.

Ms. Milik conferred with the district manager and the decision was made to discharge her for a third violation of company policy. On the day she was discharged, October 17, 2008, she was 30 minutes late to work because she had misread the schedule. She was informed by Ms. Milik she was fired for being late to work and for the unauthorized transaction. Ms. Waters acknowledged she had bought items in the store that were rung up by a part-time employee but she believed the requirement to have the sale conducted by a member of management only, applied to regularly priced items, and she had bought an item on sale; however, the policy applies to all employee purchases regardless of whether or not the item is on sale.

Danielle Waters has received unemployment benefits since filing a claim with an effective date of October 19, 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 had been advised her job was in jeopardy as a result of her failure to follow company policy. The final incident was purchasing items from the store and having the sale rung up by a non-management person. The claimant's belief the requirement of a management person to conduct the sale pertained only to regular priced items does not appear to have any basis in written policy. It seems to have been merely an assumption on her part. It was a clear violation of the company policy. In conjunction with the other warnings, the claimant's overall conduct in the last month her employment showed an overall lack of observance of the company policies. 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.

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 claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of November 20, 2008, reference 01, is reversed. Danielle Waters is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/kjw