

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ALICIA M DONAHUE
915 CASADY DR
NORWALK IA 50211

A E OUTFITTERS RETAIL COMPANY
c/o FRICK TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

SECOND AMENDED
Appeal Number: 04A-UI-02115-DWT
OC 01/11/04 R 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3- 7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

A. E. Outfitters Retail Company (employer) appealed a representative's February 16, 2004 decision (reference 01) that concluded Alicia M. Donahue (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 16, 2004. The claimant participated in the hearing. Courtney Sullivan, the store manager, and Shannon Smith, the district manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in June or July 2003. The claimant worked as a full-time assistant manager. The claimant was a salaried employee. When the claimant first started working for the employer, she was told she did not have the authority to make changes on any time clock records. The claimant, however, had the authority to make time clock record corrections. Sullivan became her store manager on January 12, 2004.

Prior to Sullivan becoming the store manager, Kevin, the manager for about four months, told Smith the claimant appeared to leave the store early. Even though Smith understood Kevin talked to the claimant about this, the claimant had no recollection of Kevin talking to her about any problems.

On January 12, the Sullivan told the claimant to work until 10:00 p.m. The claimant left the store around 9:17 p.m. but reported she had worked until 9:45 p.m. On January 13, Sullivan became upset because the claimant had not done some of the closing duties. Sullivan asked Smith for a copy of what time the store's alarm had been set on January 12. Once the store's alarm has been set, an employee has 90 seconds to leave for the night. The employer discovered the claimant set the alarm on January 6 at 9:09 p.m. and recorded she had worked until 9:30 p.m. On January 15, the claimant set the alarm at 9:06 p.m., but recorded she had worked until 9:45 p.m.

The claimant did not tell Sullivan she did not work until 10:00 p.m. on January 12 and she did not ask Sullivan to correct the claimant's time reports. On January 16 when Sullivan asked the claimant if there was any explanation for the discrepancy between the alarm setting time and the time she records she had worked, the claimant had no explanation. On January 16, 2004, the employer discharged the claimant for falsifying her time clock reports.

The claimant established a claim for unemployment insurance benefits during the week of January 11, 2004. She filed claims for the weeks ending January 17 through March 20, 2004. She received a total of \$683.00 in benefits during these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Sullivan, a new manager, told the claimant on January 12 to work until 10:00 a.m. The claimant did not work until 10:00 p.m., instead, she reported she worked until 9:45 p.m. but actually only worked until 9:17 p.m. On January 15, the claimant again reported she had worked about 45 minutes longer than she actually worked. The claimant's excuse for not working until 10:00 p.m. as Sullivan told her to do was because she had put in her 40 hours and she usually left at 9:30 p.m. As a salaried employee, the claimant could work less or more than 40 hours a week. She specifically failed to follow her store manager's direction to work until 10:00 pm. on January 12. Even if the claimant did not believe she could change the time on her time clock reports, she could have told Sullivan about the 30- to 40-minute discrepancy she worked and may have reported other employees had worked.

The claimant's failure to follow Sullivan's instruction to work until 10:00 p.m. and her failure to tell Sullivan about the 30- to 40-minute discrepancy she reported she worked to the time she actually worked amount to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for work-connected misconduct. As of January 11, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 17 through March 20, 2004. She has been overpaid a total of \$908.00 in benefits for these weeks.

DECISION:

The representative's February 16, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 11, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 17 through March 30, 2004. She has been overpaid a total of \$683.00 in benefits for these weeks.

dlw/b/b