

course of her employment the claimant received a copy of the employee handbook which includes information about the employee discount. Employees with more than one year of tenure are entitled to a 25 percent discount on all items purchased at the store. The policy specifically prohibits the reselling of any item purchased with the employee discount and provides for disciplinary action up to and including discharge for misuse of the discount.

In April 2005 loss prevention was notified by the human resources manager that the claimant may have been reselling items she purchased at the store on e-bay. This had come as a tip from another employee, and Area Loss Prevention Manager Lisa Kupfer investigated all of the claimant's transactions and e-bay auctions where she was the vendor. There was a large number of purchases from the "pool stock" of the store which had to be investigated.

The investigation was concluded two months later, and it was determined the claimant had sold a lot of merchandise on e-bay, but the majority were purchased from the "pool stock" and did not involve any discount. However, three items purchased on February 26, 2005, were paid for with the employee discount and were subsequently sold on e-bay. Ms. Kupfer interviewed the claimant on June 24, 2005, when she admitted to selling the items. She thought the store manager and others were aware of what she was doing and it was therefore "okay" since she had not been warned in advance. However, there is no evidence the store managers knew she was selling items purchased with the employee discount.

The claimant was discharged for misuse of the employee discount in violation of the company policy.

Karen Dittmer-Freese has received unemployment benefits since filing a claim with an effective date of July 17, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant received a copy of the employee handbook and knew the company policies regarding the consequences of an employee discount. She deliberately violated a known company rule, selling items she purchased with her discount for a profit on the on-line auction. This is not only a misuse of her discount and a violation of the company policy, but a conflict of interest for her as a sales associate vis-à-vis the employer's business. It is conduct not in the best interests of the employer and she is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 10, 2005, reference 01, is reversed. Karen Dittmer-Freese is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$4,860.00.

bgh/kjw