

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENEE L NAHSHON
Claimant

APPEAL NO. 10A-UI-07786-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENSCRAFTERS INC
Employer

OC: 04/25/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's May 18, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. Telephone hearings were held on July 13 and 29, 2010. The claimant appeared at both hearings. Zach Novotny, a subpoenaed witness testified at the July 29, 2010. Tom Kuiper, a TALX representative, and Julie Miller, a regional manager, appeared at both hearing. Frank Mazzacano, a regional loss prevention manager, testified at the July 29 hearing. 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on August 16, 2004. Prior to her employment separation, she worked as a full-time store manager. Miller supervised the claimant. In early April 2010, the employer received information from a store manager in Dallas, Texas, that a male customer wanted to exchange sunglasses that had been purchased with an associate discount. The receipt the customer showed the Texas manager indicated the purchase had been made by Novotny. The male customer allegedly said that he always received a 50 percent discount from the Cedar Rapids store. The employee in Texas or someone else understood the claimant's son was the male who wanted to exchange some glasses that had been purchased with an associate discount.

The employer investigated and learned the claimant purchased two pairs of glasses from a Des Moines store on March 28 with her associate discount of 50 percent. The claimant used her debit card for this transaction. The employer also learned the Novotny purchased four pairs of glasses on March 25 and used his associate discount. The claimant was present during this transaction. She started to sign the receipt for these purchases, but stopped and Novotny signed the receipt. He paid for these glasses with cash. Novotny also purchased glasses on

March 28 and 29. He used his associate discount on these purchases also. On March 28 he received a 50 percent discount and on March 29 he received a 30 percent discount for the sixth pair of glasses he purchased.

The claimant and Novotny were allowed to purchase five pairs of glasses at 50 percent off during the time at issue. They were also allowed to purchase another five pairs of glasses at a lower discount. The employer did not talk to Novotny about any of the glasses that the receipts indicated he purchased. The employer concluded the claimant used Novotny's information and actually purchased six pairs of glasses at a 50 percent discount.

On April 26, Mazzacano talked to the claimant over the phone and Miller was present with the claimant. The employer did not show the claimant any receipts of the questionable transactions. The employer accused the claimant of violating the employer's associate discount policy and falsifying information on the employer's records. The claimant denied doing this for over an hour. After the employer told the claimant that she better start telling the truth, the claimant broke down. The claimant was emotionally distraught and stressed out. She thought that if she told the employer what they wanted, a confession, she would be able to keep her job and the employer would stop accusing her. With the employer "suggesting" what the claimant should write, she wrote that she falsified documents and used Novotny's information to buy glasses at a 50 percent discount. After the claimant wrote her statement, the employer discharged her. The employer never talked to Novotny about any of the questioned transactions.

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. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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).

The first issue to address is credibility. On April 26, the claimant wrote a confession that she asserted during the hearing is false. Novotny testified that he purchased the four pair of glasses that are at issue. Novotny's testimony is credible. He testified that he purchased six pairs of glasses with the claimant present and paid cash for all six. He also testified that he purchased the four pair of glasses at issue and gave them to two of his friends as gifts. Even though Novotny's name was on the receipt for the pair of glasses a customer had in Texas, the employer never questioned him. Instead, the employer focused on the claimant. Since she

started to sign a receipt for the four glasses, the employer concluded she used Novotny's associate discount for the four glasses purchased on March 25, which Novotny disputed. The employer did not talk to Novotny about the questioned transactions, but kept interrogating the claimant for at least 90 minutes even though she denied any wrong doing. Finally, a very emotional and distraught claimant wrote a statement. The subject of the confession was verbiage suggested to her. A preponderance of the evidence indicates she made a false confession in an attempt to save her job and stop the interrogation. Novotny's testimony that he purchased the four pairs of glasses himself is credible.

The evidence does not establish that the claimant violated the employer's associate discount policy or that she falsified documents. The evidence does not establish that she committed work-connected misconduct. Therefore, as of April 25, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's May 18, 2010 decision (reference 01) is reversed. The employer discharged the claimant, but the evidence does not establish that she committed work-connected misconduct. As of April 25, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw