

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

KATIE ELLIS
1015 MAISH AVE
DES MOINES IA 50315

WALGREEN CO
C/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

AMENDED

Appeal Number: 05A-UI-11431-BT
OC: 10/09/05 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 is 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 for Misconduct
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Walgreen Company (employer) appealed an unemployment insurance decision dated October 27, 2005, reference 01, which held that Katie Ellis (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a consolidated telephone hearing was held with Appeal Number 05A-UI-11285-BT on December 14, 2005. The claimant participated in the hearing and Chasity Whisenand participated in the hearing. The employer participated through Eric Rode, District

Loss Prevention Supervisor, and Employer Representative David Williams. Employer's Exhibits One through Three were admitted into evidence.

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 employed as a full-time head photo specialist from May 27, 1997 through October 5, 2005. She was discharged for theft by fraudulently obtaining promotional money during the month of September 2005. The employer discovered the claimant's actions in the beginning of October 2005 as a result of an unrelated investigation. The claimant admitted improperly using a coupon on photo orders so that she could receive promotional money or a bonus of approximately 50 cents. The employer allows employees to use the coupons only when a customer presents it to them or asks for it. The claimant admitting using the coupons and advising her employees they could still receive promotional money on the free CD coupon. The claimant used the coupons on almost every order without a customer requesting it or possessing the coupon as store policy requires. This was done even after she was advised by management not to use the coupons unless it was done in compliance with the employer's policies.

The claimant provided a written statement confirming her actions and admitting she split orders on enlargements to make more promotional money. She signed an agreement to repay the employer the amount of \$100.00, which is an amount she determined. The contract states that, "I sign this Agreement to Repay voluntarily, in recognition of my wrongful appropriation of money and/or property from WALGREENS. I understand that no promises of immunity from criminal prosecution or termination of employment have been made to me by officers or agents of WALGREENS." The District Loss Prevention Supervisor advised the claimant he had nothing to do with whether or not she was terminated. The claimant was discharged on October 5, 2005. She now denies all wrongdoing.

The claimant filed a claim for unemployment insurance benefits effective October 9, 2005 and has received benefits after the separation from employment in the amount of \$2,916.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 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 claimant was discharged for theft by fraudulently obtaining promotional money. Although she now denies any wrongdoing, she admitted theft to the employer at the time of her discharge and signed a legally binding contract admitting her wrongful appropriation of the employer's money and/or property. The claimant argues that she was acting in the best interests of the customers and the employer since she claimed it would bring more return business. Regardless of the what the claimant believes, it is up to the employer to determine how a coupon should be used and the claimant clearly refused to follow those determinations. The claimant's theft was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated October 27, 2005, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,916.00.

sdb/tjc/kjw