

**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**

**AMBJOUR M HAZEN  
504 N MARKET APT B  
OTTUMWA IA 52501**

**PARISIAN VIRGINIA LLC  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166**

**Appeal Number: 05A-UI-01301-JTT  
OC: 01/02/05 R: 03  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct  
Section 96.4(3) – Recovery of Overpayment

STATEMENT OF THE CASE:

Parisian Virginia filed a timely appeal from the January 26, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 2, 2005. Ambjour Hazen did not respond to the notice of the hearing and did not participate. Parisian Virginia participated through Angela Olds, Charlotte Katko, and Shane Thorpe. Exhibits One through Eight were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ambjour Hazen was employed by Parisian Virginia as a part-time employee from November 2003 until

December 18, 2004, when Charlotte Katko, Store Manager, discharged her for misconduct. Ms. Hazen's last position with the employer had been as a Clinique Consultant.

The last incident that prompted Ms. Katko to discharge Ms. Hazen came to the attention of Ms. Katko on December 13, 2004. On that date, Ms. Katko learned from Area Loss Prevention Officer Shane Thorpe that Ms. Hazen had a felony conviction that pre-dated her employment. See Exhibits Two through Seven. Mr. Thorpe had conducted a criminal history check through the Iowa Judicial Branch on-line records as part of an investigation into possible theft of merchandise from the Clinique counter area. After receiving this information, Ms. Katko and Angela Olds, Assistant Store Manager in Charge of Human Resources, reviewed the application for employment executed by Ms. Hazen on October 22, 2003. On that document, Ms. Hazen indicated she had never been convicted of a crime. This information was provided in response to a question on the application. The information next to the question and Ms. Hazen's response indicated as follows: "Answering yes won't automatically disqualify you—we have hired people who answer yes, depending on the offense and the specific job applied for. However, if you say no, and our background check shows that you did not provide complete or truthful information, you can be terminated for falsification, regardless of the date or details of the incident. If you are unsure if a situation should be included, be sure to ask." See Exhibit One. On the reverse page of the application, the following text appears: "Important: Please Read Carefully ... Please answer all the questions here truthfully and completely. If you don't and you are hired, you could lose your job." Ms. Hazen signed and dated the application on October 22, 2003. See Exhibit One.

After discerning that Ms. Hazen had falsified her employment application, Ms. Katko met with Ms. Hazen on the claimant's next scheduled shift, December 18, 2004, and notified Ms. Hazen that she was being discharged for falsifying her employment application. There was no other reason for the discharge.

Ms. Hazen had, received two prior reprimands: one for ignoring customers while she engaged in what appeared to be a personal telephone call and one for changing her schedule without authorization to do so. The latter incident resulted in customers appearing for appointments with no one present to assist them.

Ms. Hazen established a claim for benefits that was effective January 2, 2005. Since that time, Ms. Hazen has received benefits totaling \$1,152.00.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue to be addressed is whether the evidence in the record establishes that Ms. Hazen was discharged for misconduct in connection with her employment. It does.

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).

Since Ms. Hazen was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that Ms. Hazen deliberately misled the employer when she indicated on her employment application that she did not have any prior criminal convictions. Ms. Hazen was in fact a convicted felon. This was something the employer had a right to know. Ms. Hazen's misrepresentation may have unnecessarily exposed the employer to liability. Ms. Hazen engaged in a deliberate act or omission that constituted a material breach of the duties and obligations she, as an employee, owed the employer. The misrepresentation indicated a willful or wanton disregard of the employer's interests. See 871 IAC 24.32(1)(a). Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Hazen was discharged for misconduct. Accordingly, Ms. Hazen is disqualified for benefits.

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 administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$1,152.00. Ms. Hazen will have to repay that amount. See Iowa Code section 96.3(7).

#### DECISION

The decision of the representative dated January 26, 2005, reference 01, is reversed. The claimant was discharged for misconduct. The claimant is disqualified for benefits until she has worked and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant is overpaid unemployment insurance benefits in the amount of \$1,152.00.

jt/kjf