

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER M SURA**  
Claimant

**APPEAL NO. 08A-UI-02054-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LENSCRAFTERS INC**  
Employer

**OC: 01-27-08 R: 02  
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 25, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 13, 2008. The claimant did participate. The employer did participate through Pat Lofgreen, Regional Manager and was represented by Ralph McGlothlen of TALX UC eXpress. Employer's Exhibit One was received.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a store manager full time beginning June 6, 2006 through January 3, 2008 when she was discharged.

During a meeting with Ms. Lofgreen, the claimant admitted that over the past year she had smoked marijuana in an attempt to deal with her depression or mental issues. The claimant knew that the employer was a drug-free workplace and as store manager the claimant was responsible for enforcing the employer's drug-free workplace policy. When the claimant told Ms. Lofgreen that she had been using marijuana during her employment, Ms. Lofgreen immediately told her that she would have to report the claimant's disclosure to the human resources manager so that an investigation could be conducted. At hearing the claimant admitted to smoking marijuana on two separate occasions while employed by Lenscrafters in violation of the employer's policy.

The claimant has received unemployment benefits since filing a claim with an effective date of January 27, 2008.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

The claimant volunteered to her supervisor that she had violated the employer's drug-free policy. The claimant's free admission to the employer of a violation of the employer's policies is misconduct. The employer's discharged was not predicated on a positive drug test, but on the claimant's own admission of marijuana use. While the claimant alleges that she has since stopped using marijuana, the claimant did admit to using marijuana on at least two occasions when as an employee she was required to be drug free. Her cessation of illegal conduct is laudable, but it does not negate the fact that she did commit misconduct which she freely admitted. The claimant's admission of her violation of the employer's drug-free policy constitutes disqualifying misconduct. Benefits are denied.

Iowa Code § 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 February 25, 2008, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 \$630.00.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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