

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALYSON A PARKER
Claimant

APPEAL NO. 13A-UI-10468-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**THE BON-TON DEPARTMENT STORES
INC**
Employer

OC: 08/11/13
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated September 4, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 8, 2013. Claimant participated. The employer participated by Ms. Kathy Done, Human Resources Assistant, and Ms. Patty Britt, Assistant Store Manager. Employer's Exhibits A, B, C, D, E, F, G, H, N and I were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Alyson Parker was employed by the Bon-Ton Department Stores from November 4, 2012 until August 14, 2013 when she was discharged for failure to follow company procedure after being warned. Ms. Parker was employed as a full-time sales associate in the company's fine jewelry department and was paid by the hour. Her immediate supervisor was Christy Pool.

Ms. Parker was discharged on August 14, 2013 after the employer discovered there was missing and misplaced jewelry in the fine jewelry department and concluded that Ms. Parker had the responsibility to insure that the jewelry items had been placed in a secure location pending their sale or their return to the buyers.

A fine silver bracelet that the claimant had checked in as new merchandise on July 27, 2013 was not in its proper secure location but instead was found in a pile of papers in the work area on July 29, 2013. The employer also concluded that two other fine jewelry items that had been brought in earlier to be sized could not be located although the claimant had signed for them on

July 8, 2013. Ms. Parker was aware of the company's expectations that she would place fine jewelry items in safes, locked cases or other secure places as part of her work as a sales associate in the company's fine jewelry department. Ms. Parker had received a number of specific warnings from the company for her failure to follow these procedures and had been placed on permanent probation because of her omissions in that respect.

It is Ms. Parker's position that her supervisor, Christy Pool, was the last person who handled each of the misplaced or missing items and that the claimant did not follow the required safety/security precautions because her supervisor did not do so. Ms. Parker maintains that although she was aware of the company's expectations through the warnings that had been served upon her, she did not want to upset her supervisor by doing things in a way that was different from the way that her supervisor handled security. Ms. Parker maintains that her supervisor's practice was to leave fine jewelry items lying about and often did not secure them by locking them up or placing them in secure places.

Ms. Parker did not state these reasons as her failure to comply with the employer's security expectations either during the investigation of this matter or at the time of her discharge.

Both Ms. Parker and her employer had active personal participation in the fact finding of this matter.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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.

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 insurance benefits. Conduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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. of Appeals 1992).

In this matter the evidence in the record establishes that Ms. Parker had demonstrated the ability to properly adhere to Bon-Ton Department Stores' security requirements for the placement of fine jewelry in its jewelry department. Claimant was aware that the company expectation was that valuable items would be placed in a secure place locked in cabinets or in safes in order to secure that the items were not stolen, misplaced or unaccounted for.

The evidence further establishes, however, that on numerous occasions Ms. Parker did not follow these policies and had received specific warnings from her employer regarding her omissions and what the employer's expectations were in the future. In spite of the specific warnings, Ms. Parker continued to not follow the employer's security requirements by placing valuables in a safe and secure place. After the employer determined that the claimant was not following the warnings that had been served upon her by the company and valuable items continued to be misplaced or unaccounted for and had been in the possession or checked in by the claimant, the employer reasonably concluded that Ms. Parker was not following the policies or procedures after being warned and the claimant was discharged.

Although the administrative law judge is aware that Ms. Parker maintains that she did not follow company security procedures because her supervisor did not do so, the administrative law judge notes that Ms. Parker did not provide this explanation to her employer either during the time that the matter was being investigated or at the time that she was being discharged. The administrative law judge thus finds the claimant's testimony that security procedures were generally not being followed in the fine jewelry department to strain credibility. The administrative law judge concludes that the employer has sustained its burden of proof in establishing the claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand to the Claims Division for determination whether there has been an overpayment and the amount of the overpayment. The claimant is liable to repay the overpayment in this matter as the employer actively participated in fact finding in this matter.

DECISION:

The representative's decision dated September 4, 2013, reference 01, is reversed. Claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant has been overpaid and the amount of the overpayment is remanded to the Claims Division for determination. The claimant is liable to repay the overpayment as the evidence establishes the employer actively participated in the fact finding on this matter.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs