

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

AMANDA L MILLER
504 S POCAHONTAS
OTTUMWA IA 52501

PARISIAN VIRGINIA LLC
c/o TALX – UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-00473-SWT
OC: 12/12/04 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 4, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 27, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Shane Thorpe participated in the hearing on behalf of the employer with witnesses, Angela Moses, Angela Olds, and Charlotte Katko. Exhibits One through Three were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer as a sales associate from September 30, 2003, to December 13, 2004. The claimant was informed and understood that under the employer's work rules, improper use of store discounts was grounds for discipline up to and including discharge. The claimant had been warned on September 30, 2004, for entering the wrong

amount for cash tendered during a transaction and on November 22, 2004, for failing to have a customer sign the charge slip.

On November 26, 2004, the store was having a sale going on for which ten-dollar-off coupons were distributed to customers and employees. The claimant knew that the coupons had printed on them that they were "one per customer." Despite this fact, the claimant collected three coupons from family members and used them in three separate purchases while she was shopping after her work shift. She knew that she should not have used multiple coupons. She did not have approval to do this from any manager.

On December 6, 2004, the claimant waited on a friend who purchased two ties and a dress shirt. The customer represented that an employee in the men's department had said the items were on sale for one-half off the marked down price. In addition, the claimant gave her an additional 20 percent off for applying for a Herberger's charge card and allowed her to use a 20 percent coupon as well. The claimant knew that it was improper to use all of these discounts on the merchandise.

The claimant's supervisor questioned the discounts given to the friend, and as a result, an investigation was done. During the investigation, the improper discount on November 26 was discovered. The claimant admitted in a voluntary statement taken during the investigation that she knew that should have only used one ten-dollar-off coupon for the purchases on November 26 and had improperly discounted merchandise for a friend on December 6.

After the investigation was completed, the employer discharged the claimant on December 13, 2004, for giving and receiving improper discounts

The claimant filed for and received a total of \$571.00 in unemployment insurance benefits for the weeks between December 12, 2004, and January 22, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. In the claimant's statement to the loss prevention, which I conclude was voluntarily, she admitted that she knew that she was only allowed to use one coupon and had improperly discounted her friend's purchases. The claimant's violation of a known work rule 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.

The next issue in this case is whether the claimant was overpaid unemployment insurance 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$571.00 in unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated January 4, 2005, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$571.00 in unemployment insurance benefits, which must be repaid.

saw/pjs