

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELENI MATOS

Claimant

APPEAL NO: 13A-UI-02324-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEST BUY STORES LP

Employer

OC: 07/22/12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 20, 2013, reference 04, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 26, 2013. The claimant participated in the hearing. Christopher Geigle, General Manager and Tom Kuiper, Employer's Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time mobile manager for Best Buy from August 12, 2012 to January 10, 2013. On December 29, 2012, the claimant's sister-in-law went into the store to return an I-Pod Touch that she purchased for her son on Christmas Eve. The employer was out of I-Pod Touch cases that were selling for \$30.99 the day she purchased the I-Pod. When her son opened the I-Pod Christmas Day it was cracked and had not been wiped so it asked for the previous owner's password and was unusable. The claimant was embarrassed when her nephew opened the gift because she managed that department for the employer. The claimant returned the I-Pod for her nephew.

The claimant notified her sister-in-law the I-Pods were in stock again December 29, 2012, and her sister-in-law and nephew went into the store to pick up a new I-Pod. Another associate was helping them and someone told the claimant they were there. The claimant's sister-in-law looked for a case and could not find the one she wanted and settled for a different case that was \$40.99. An associate was assisting the claimant's sister-in-law and nephew and the claimant went over to where they were. Her nephew asked her if she could put the case on for him and she could not do it so she asked the associate to do so. The claimant was called away to do an override on another register. Before she left she instructed the associate to ring the case up as an open item but the associate did not know how to do it that way and said she was going to

ring up the purchase as a price match so the claimant's sister-in-law could receive the Christmas price. When the claimant left, the associate was ringing the I-Pod case up as a price match.

On January 3, 2013, the claimant was called to the office and asked if she gave a family member a discount. The claimant said she did not and explained the situation as a price match. The employer has a policy that if an employee gives a customer more than a 33 percent discount she must partner with a leadership manager to override the stated price. The claimant was unaware of the policy. The employer then asked the claimant to provide a written statement regarding the incident (Employer's Exhibit One). The employer determined the claimant's statement did not match that of the associate that assisted the claimant's sister-in-law and consequently it met with the claimant again January 9, 2013. It confronted the claimant with her statement and the associate's statement and the claimant acknowledged her sister-in-law asked about a price for an open item. When the employer asked her why she did not partner with another manager in working with her family members as required by the employer's policy the claimant stated she was stressed and busy. The employer asked if she was aware she was not to help family members with a purchase, especially if it involved a price change, and the claimant stated she was coached by a management employee when her brother came in to purchase an I-Pad before Christmas and the manager of that department was running a \$200.00 price reduction on the product. She was called to the department, not knowing her brother was the customer in question, to override a problem on the register and a manager called her over and told her she should not place herself in the position of dealing with a family member and should partner with a member of management to avoid judgment calls with family members. The claimant indicated she did not believe under the circumstances with her sister-in-law December 29, 2012, she was required to partner with a manager.

The employer believed the situations with the claimant's brother and sister-in-law demonstrated that the claimant had integrity issues and violated the employer's policy regarding conflict of interest in dealing with her sister-in-law December 29, 2012. The employer notified the claimant her employment was terminated January 10, 2013, for negotiating a price discount for a family member in violation of the employer's policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant was a manager for the employer but had not been to management or sales induction training. While she was coached about assisting family members when her brother came in to purchase a I-Pad in December 2012, she did not meet the family members in question on either occasion when they came in to the store but instead was called over to do an override on her brother's purchase, because she was a manager and did not even know the customer she was on her way to help was her brother, and was told by an associate her sister-in-law and nephew were in the store December 29, 2012, and went over mostly to see them and make sure they were being helped after the debacle with her nephew's I-Pod on Christmas. She accepted the coaching provided her by another manager to effectively avoid even the appearance of impropriety when her brother was in earlier in December 2012 and did not intentionally violate the policy of getting a partner in management to help her assist her sister-in-law as another associate was already helping her by the time the claimant arrived. There is a discrepancy about whether the claimant directed the associate to ring up the I-Pod case as an open item or a price match. The claimant credibly explained when she was called away from the area the associate stated she was going to do a price match on the I-Pod case and give her sister-in-law the sale price of the item before Christmas because the store was out of cases when she first attempted to purchase it with the I-Pod and that I-Pod was cracked and unusable when opened by her nephew on Christmas. Under these circumstances, the administrative law judge concludes the evidence does not establish that the claimant willfully or intentionally violated the employer's policies regarding conflict of interest or partnering with a manager when dealing with a family member or inappropriately directed the associate on how to ring up the purchase of the I-Pod case. Therefore, benefits are allowed.

DECISION:

The February 20, 2013, reference 04, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css